

1 **THIS NOTEHOLDER DISCLOSURE STATEMENT HAS BEEN SUBMITTED TO, BUT**  
2 **HAS NOT YET BEEN APPROVED BY THE UNITED STATES BANKRUPTCY COURT**  
3 **FOR THE DISTRICT OF NEVADA AS COMPLYING WITH THE REQUIREMENTS OF**  
4 **SECTION 1125 OF THE BANKRUPTCY CODE. INFORMATION CONTAINED IN**  
5 **THIS NOTEHOLDER DISCLOSURE STATEMENT IS SUBJECT TO THE**  
6 **QUALIFICATIONS SET FORTH HEREIN IN ALL RESPECTS.**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re

AHERN RENTALS, INC.,

Debtor.

Chapter 11

Case No.: BK-N-11-53860-BTB

Date of Hearing: March 8, 2013

Time of Hearing: 10:00 a.m.

**DISCLOSURE STATEMENT FOR THE PLAN OF  
REORGANIZATION FOR AHERN RENTALS, INC. PROPOSED BY CERTAIN  
HOLDERS OF THE 9¼% SENIOR SECURED SECOND LIEN NOTES DUE 2013**

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**EXHIBITS**

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**DISCLAIMER**

PURSUANT TO SECTION 1128 OF TITLE 11 OF THE UNITED STATES CODE (THE "BANKRUPTCY CODE"), A CONFIRMATION HEARING WILL BE HELD WITH RESPECT TO THE PLAN OF REORGANIZATION FOR AHERN RENTALS, INC. (THE "DEBTOR") PROPOSED BY CERTAIN HOLDERS OF THE 9¼% SENIOR SECURED SECOND LIEN NOTES DUE 2013 (THE "NOTEHOLDER PLAN") ON [\_\_\_\_], 2013, AT [\_\_\_\_] (**PREVAILING PACIFIC TIME**), BEFORE THE HONORABLE BRUCE T. BEESLEY, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA (THE "BANKRUPTCY COURT"), 300 BOOTH STREET, RENO, NEVADA 89509 (THE "CONFIRMATION HEARING"). OBJECTIONS, IF ANY, TO CONFIRMATION OF THE NOTEHOLDER PLAN MUST BE FILED AND SERVED ON OR BEFORE [\_\_\_\_], 2013 AT [\_\_\_\_] (**PREVAILING PACIFIC TIME**). THE CONFIRMATION HEARING MAY BE ADJOURNED FROM TIME TO TIME WITHOUT FURTHER NOTICE.

MUCH OF THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (THE "NOTEHOLDER DISCLOSURE STATEMENT") IS BASED ON THE DISCLOSURE STATEMENT WITH RESPECT TO THE PLAN OF REORGANIZATION PROPOSED BY THE DEBTOR. THE PROPONENTS HAVE HAD LIMITED ACCESS TO THE DEBTOR'S MANAGEMENT AND BOOKS AND RECORDS, AND THEREFORE HAVE NOT HAD THE ABILITY TO CONDUCT REASONABLE DILIGENCE OR TO VERIFY THE ACCURACY OF THE INFORMATION IN THE DEBTOR'S DISCLOSURE STATEMENT OR OTHERWISE PROVIDED OR PREPARED BY THE DEBTOR.

THE FINANCIAL PROJECTIONS REFERRED TO IN THIS NOTEHOLDER DISCLOSURE STATEMENT WERE PREPARED BY THE DEBTOR. THE DEBTOR'S FINANCIAL PROJECTIONS HAVE BEEN MODIFIED BY THE PROPONENTS' FINANCIAL ADVISOR TO INCORPORATE CERTAIN MODIFICATIONS AND ADJUSTMENTS. UNLESS OTHERWISE SPECIFIED HEREIN, THE STATEMENTS CONTAINED IN THIS NOTEHOLDER DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED IN THIS NOTEHOLDER DISCLOSURE STATEMENT WILL BE CORRECT AT ANY LATER DATE. WHILE THE PROPONENTS HAVE PRESENTED THESE FINANCIAL PROJECTIONS WITH NUMERICAL SPECIFICITY, THEY HAVE NECESSARILY BASED THE FINANCIAL PROJECTIONS ON A VARIETY OF ESTIMATES AND ASSUMPTIONS THAT MAY NOT BE REALIZED, AND ARE INHERENTLY SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC, COMPETITIVE, INDUSTRY, REGULATORY, MARKET AND FINANCIAL UNCERTAINTIES AND CONTINGENCIES, MANY OF WHICH WILL BE BEYOND THE PROPONENTS' AND THE DEBTOR'S CONTROL. THE PROPONENTS CAUTION THAT THEY DO NOT AND CANNOT MAKE ANY REPRESENTATIONS AS TO THE ACCURACY OF THESE FINANCIAL PROJECTIONS OR TO THE DEBTOR'S ABILITY TO ACHIEVE THE PROJECTED RESULTS. SOME ASSUMPTIONS INEVITABLY WILL NOT MATERIALIZE. FURTHERMORE, EVENTS AND CIRCUMSTANCES OCCURRING SUBSEQUENT TO THE DATE ON WHICH THE FINANCIAL PROJECTIONS WERE OR WILL BE PREPARED MAY DIFFER FROM ANY ASSUMED FACTS AND CIRCUMSTANCES. ANY EVENTS AND CIRCUMSTANCES THAT COME TO PASS MAY WELL HAVE BEEN UNANTICIPATED, AND THUS MAY AFFECT FINANCIAL RESULTS IN A MATERIALLY ADVERSE OR MATERIALLY BENEFICIAL MANNER. THE FINANCIAL PROJECTIONS, THEREFORE,

1 MAY NOT BE RELIED UPON AS A GUARANTY OR OTHER ASSURANCE OF THE  
2 ACTUAL RESULTS THAT WILL OCCUR.

3 THIS NOTEHOLDER DISCLOSURE STATEMENT IS BEING DISTRIBUTED FOR THE  
4 PURPOSE OF SOLICITING ACCEPTANCES OF THE NOTEHOLDER PLAN FROM THE  
5 PARTIES ENTITLED TO VOTE ON THE NOTEHOLDER PLAN. A COPY OF THE  
6 NOTEHOLDER PLAN IS ATTACHED AS EXHIBIT A HERETO. ALL HOLDERS OF CLAIMS  
7 AGAINST OR EQUITY INTERESTS IN THE DEBTOR THAT ARE ENTITLED TO VOTE ON  
8 THE NOTEHOLDER PLAN ARE ADVISED AND ENCOURAGED TO READ THIS  
9 NOTEHOLDER DISCLOSURE STATEMENT AND THE NOTEHOLDER PLAN IN THEIR  
10 ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE NOTEHOLDER PLAN. THE  
11 PROPONENTS INTEND TO SEEK TO CONFIRM THE NOTEHOLDER PLAN AND TO  
12 CAUSE THE EFFECTIVE DATE OF THE NOTEHOLDER PLAN TO OCCUR PROMPTLY  
13 AFTER CONFIRMATION OF THE NOTEHOLDER PLAN. HOWEVER, THERE CAN BE NO  
14 ASSURANCE AS TO WHETHER OR WHEN THE CONFIRMATION OR THE EFFECTIVE  
15 DATE OF THE NOTEHOLDER PLAN ACTUALLY WILL OCCUR.

16 THIS NOTEHOLDER DISCLOSURE STATEMENT HAS BEEN PREPARED IN  
17 ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(b) OF  
18 THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (THE "BANKRUPTCY RULES")  
19 AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES  
20 LAWS OR OTHER NONBANKRUPTCY LAW. THIS NOTEHOLDER DISCLOSURE  
21 STATEMENT HAS BEEN NEITHER REVIEWED NOR APPROVED BY THE U.S.  
22 SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), OR BY ANY STATE  
23 SECURITIES COMMISSION OR SIMILAR PUBLIC, GOVERNMENTAL, OR REGULATORY  
24 AUTHORITY, AND NEITHER THE SEC NOR ANY OTHER SUCH STATE AUTHORITY HAS  
25 PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED  
26 HEREIN. THE INFORMATION IN THIS NOTEHOLDER DISCLOSURE STATEMENT MAY  
27 NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO  
28 VOTE ON THE NOTEHOLDER PLAN. NO SOLICITATION OF VOTES TO ACCEPT THE  
NOTEHOLDER PLAN MAY BE MADE EXCEPT PURSUANT TO SECTION 1125 OF THE  
BANKRUPTCY CODE.

20 AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER  
21 CAUSES OF ACTION OR THREATENED ACTIONS, THIS NOTEHOLDER DISCLOSURE  
22 STATEMENT WILL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY  
23 FACT OR LIABILITY, OR AS A STIPULATION OR WAIVER, BUT RATHER AS A  
24 STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS NOTEHOLDER  
25 DISCLOSURE STATEMENT WILL NOT BE ADMISSIBLE IN ANY BANKRUPTCY OR  
26 NONBANKRUPTCY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY  
27 (OTHER THAN IN CONNECTION WITH APPROVAL OF THIS NOTEHOLDER  
28 DISCLOSURE STATEMENT OR CONFIRMATION OF THE NOTEHOLDER PLAN), NOR  
WILL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR  
OTHER LEGAL EFFECTS OF THE NOTEHOLDER PLAN AS TO HOLDERS OF CLAIMS  
AGAINST OR EQUITY INTERESTS IN THE DEBTOR. YOU ARE ADVISED TO OBTAIN  
INDEPENDENT EXPERT ADVICE ON SUCH SUBJECTS.

1 THE OFFER OF NEW DEBT INSTRUMENTS OR EQUITY SECURITIES TO HOLDERS  
 2 OF CERTAIN CLASSES OF CLAIMS OR EQUITY INTERESTS HAVE NOT BEEN  
 3 REGISTERED UNDER THE SECURITIES ACT OF 1933 (AS AMENDED, THE "SECURITIES  
 4 ACT") OR SIMILAR STATE SECURITIES OR "BLUE SKY" LAWS. THE OFFERS AND  
 5 ISSUANCES ARE BEING MADE IN RELIANCE ON THE EXEMPTION FROM  
 6 REGISTRATION SPECIFIED IN SECTIONS 1125 AND 1145 OF THE BANKRUPTCY CODE,  
 7 AS APPLICABLE, OR OTHER EXEMPTIONS FROM REGISTRATION UNDER THE  
 8 SECURITIES ACT. NONE OF THE NEW DEBT INSTRUMENTS OR EQUITY SECURITIES  
 9 TO BE ISSUED UNDER OR IN CONNECTION WITH THE NOTEHOLDER PLAN, OR UPON  
 10 EXERCISE OF ANY NEW WARRANTS CONTEMPLATED BY THE NOTEHOLDER PLAN,  
 11 HAS BEEN APPROVED OR DISAPPROVED BY THE SEC OR BY ANY STATE SECURITIES  
 12 COMMISSION OR SIMILAR PUBLIC, GOVERNMENTAL, OR REGULATORY AUTHORITY,  
 13 AND NEITHER THE SEC NOR ANY SUCH STATE AUTHORITY HAS PASSED UPON THE  
 14 ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THIS  
 15 NOTEHOLDER DISCLOSURE STATEMENT OR UPON THE MERITS OF THE  
 16 NOTEHOLDER PLAN. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL  
 17 OFFENSE.

18 SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION  
 19 REFORM ACT OF 1995: ALL FORWARD-LOOKING STATEMENTS CONTAINED HEREIN  
 20 OR OTHERWISE MADE BY THE PROPONENTS INVOLVE MATERIAL RISKS AND  
 21 UNCERTAINTIES AND ARE SUBJECT TO CHANGE BASED ON NUMEROUS FACTORS,  
 22 INCLUDING FACTORS THAT ARE BEYOND THE PROPONENTS' CONTROL.  
 23 ACCORDINGLY, THE DEBTOR'S FUTURE PERFORMANCE AND FINANCIAL RESULTS  
 24 MAY DIFFER MATERIALLY FROM THOSE EXPRESSED OR IMPLIED IN ANY SUCH  
 25 FORWARD-LOOKING STATEMENTS. SUCH FACTORS INCLUDE, BUT ARE NOT  
 26 LIMITED TO, THOSE DESCRIBED IN THIS NOTEHOLDER DISCLOSURE STATEMENT.  
 27 THE PROPONENTS DO NOT UNDERTAKE TO PUBLICLY UPDATE OR REVISE  
 28 FORWARD-LOOKING STATEMENTS EVEN IF EXPERIENCE OR FUTURE CHANGES  
 MAKE IT CLEAR THAT ANY PROJECTED RESULTS EXPRESSED OR IMPLIED THEREIN  
 WILL NOT BE REALIZED.

19 THIS NOTEHOLDER DISCLOSURE STATEMENT CONTAINS, AMONG OTHER  
 20 THINGS, SUMMARIES OF THE NOTEHOLDER PLAN, CERTAIN STATUTORY  
 21 PROVISIONS, CERTAIN EVENTS IN THE DEBTOR'S CHAPTER 11 CASE AND CERTAIN  
 22 DOCUMENTS RELATED TO THE NOTEHOLDER PLAN THAT ARE ATTACHED HERETO  
 23 OR HAVE BEEN OR WILL BE SEPARATELY FILED WITH THE BANKRUPTCY COURT.  
 24 ALTHOUGH THE PROPONENTS BELIEVE THAT THESE SUMMARIES ARE FAIR AND  
 25 ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE  
 26 EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH  
 27 DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN  
 28 THE EVENT OF ANY CONFLICT, INCONSISTENCY OR DISCREPANCY BETWEEN A  
 DESCRIPTION IN THIS NOTEHOLDER DISCLOSURE STATEMENT AND THE TERMS AND  
 PROVISIONS OF THE NOTEHOLDER PLAN OR ANY OTHER SUCH DOCUMENTS, THE  
 NOTEHOLDER PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN AND CONTROL  
 FOR ALL PURPOSES. EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED, FACTUAL  
 INFORMATION CONTAINED IN THIS NOTEHOLDER DISCLOSURE STATEMENT IS  
 BASED UPON INFORMATION THAT IS PUBLICLY AVAILABLE OR PROVIDED TO THE

1 PROPONENTS BY THE DEBTOR'S MANAGEMENT AND/OR THE DEBTOR'S ADVISORS.  
2 THE PROPONENTS HAVE NOT INDEPENDENTLY VERIFIED SUCH INFORMATION, AND  
3 AS SUCH, MAKE NO REPRESENTATION OR WARRANTY THAT THE INFORMATION  
4 CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL  
5 INACCURACY OR OMISSION.

6 HOLDERS OF CLAIMS AND EQUITY INTERESTS ENTITLED TO VOTE TO ACCEPT  
7 OR REJECT THE NOTEHOLDER PLAN MUST RELY ON THEIR OWN EVALUATION OF  
8 THE DEBTOR AND THEIR OWN ANALYSES OF THE TERMS OF THE NOTEHOLDER  
9 PLAN. IMPORTANTLY, PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE  
10 NOTEHOLDER PLAN, EACH HOLDER OF A CLAIM OR AN EQUITY INTEREST IN A  
11 VOTING CLASS SHOULD REVIEW THE NOTEHOLDER PLAN IN ITS ENTIRETY AND  
12 CONSIDER CAREFULLY ALL OF THE INFORMATION IN THIS NOTEHOLDER  
13 DISCLOSURE STATEMENT AND ANY EXHIBITS HERETO, INCLUDING THE RISK  
14 FACTORS DESCRIBED IN GREATER DETAIL IN ARTICLE XVI HEREIN, AND THE  
15 NOTEHOLDER PLAN SUPPLEMENT.

16 EXCEPT AS OTHERWISE SPECIFICALLY NOTED, THE FINANCIAL INFORMATION  
17 CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC  
18 ACCOUNTANT AND HAS NOT NECESSARILY BEEN PREPARED IN ACCORDANCE WITH  
19 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

20 IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230,  
21 HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE HEREBY NOTIFIED THAT: (I) ANY  
22 DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS  
23 NOTEHOLDER DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE  
24 USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR EQUITY INTERESTS FOR  
25 PURPOSES OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE  
26 INTERNAL REVENUE CODE; (II) SUCH DISCUSSION IS WRITTEN IN CONNECTION  
27 WITH THE PROMOTION OR MARKETING BY THE PROPONENTS OF THE  
28 TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS  
AND EQUITY INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR  
CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

## INTRODUCTION

Del Mar Master Fund Ltd. (“Del Mar”), Feingold O’Keeffe Capital, LLC (“Feingold”), Nomura Corporate Research & Asset Management Inc. (“Nomura”), Och-Ziff Capital Management Group (“Och-Ziff”), Sphere Capital, LLC - Series B (“Sphere”) and Wazee Street Capital Management, LLC (“Wazee” and, together with Del Mar, Feingold, Nomura, Och-Ziff and Sphere, the “Proponents”), Holders of approximately 90% of the 9¼% Senior Secured Notes due 2013, hereby submit this Noteholder Disclosure Statement to Holders of Claims and Equity Interests in the Debtor for (i) the solicitation of votes on the Noteholder Plan, filed by the Proponents with the Bankruptcy Court, and (b) the Confirmation Hearing to consider confirmation of the Noteholder Plan. Unless otherwise defined herein, all capitalized terms contained in this Noteholder Disclosure Statement shall have the meanings ascribed to them in Article I of the Noteholder Plan.

This Noteholder Disclosure Statement has been prepared to comply with section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016(b), and is hereby transmitted by the Proponents pursuant to section 1126(b) of the Bankruptcy Code for use in the solicitation of acceptances of the Noteholder Plan, a copy of which is attached hereto as Exhibit A.

The primary purpose of the Noteholder Plan is to effectuate the restructuring of the Debtor’s capital structure in order to bring it into alignment with the Debtor’s present and future operating prospects and to provide the Debtor with greater liquidity. Presently, the funds expected to be generated by the Debtor from operation of its business based on the current outlook and other sources are insufficient to meet the Debtor’s debt service requirements and satisfy its debt obligations unless the Noteholder Plan is consummated. The Proponents believe that the restructuring contemplated by the Noteholder Plan will reduce uncertainty with respect to the Debtor’s future and better position the Debtor to develop and maintain new customers.

### A. Summary Of The Noteholder Plan

The restructuring will reduce the principal amount of the Debtor’s outstanding indebtedness by at least \$267.7 million by converting all of the Second Lien Notes into New Equity Interests of Reorganized Ahern. The New Equity Interests in Reorganized Ahern will be subject to dilution from: (i) the issuance of New Equity Interests in connection with the Backstopped Rights Offering, (ii) the exercise of New Warrants of Reorganized Ahern issued to Holders of existing Equity Interests in the Debtor; and (iii) New Equity Interests issued in connection with a Management Equity Incentive Plan.

Other than the Second Lien Notes Claims, the Noteholder Plan leaves Unimpaired or otherwise pays in full in Cash all of the Debtor’s Claim Holders. Specifically, the Noteholder Plan provides for the cash payment in full of the DIP Loan, Allowed Administrative Claims, Other Priority Claims, Priority Tax Claims, First Lien Term Loan Claims, Personal Injury Claims and General Unsecured Claims. Holders of certain Other Secured Claims will also be rendered Unimpaired under the Noteholder Plan. Holders of Insider Claims will be entitled to full recoveries on their Allowed Claims, which will be paid out over time following the conclusion of any litigation related to the Insider Claims that may be brought following the Effective Date. Finally, Don F. Ahern and John Paul Ahern, Jr., the sole shareholders of the Debtor, will receive New Warrants in satisfaction of their existing Equity Interests. On balance, the Noteholder Plan provides Holders of

1 Claims against the Debtor with superior treatment to that which such Holders would receive under  
2 the Debtor's Plan, which impairs substantially all of the Debtor's Claim Holders.

3 To fund Cash Distributions to be made under the Noteholder Plan, Reorganized Ahern will  
4 enter into an Exit Financing Facility in the anticipated amount of up to \$450 million. In addition, the  
5 Proponents will backstop a rights offering of the New Equity Interests of Reorganized Ahern for an  
6 additional infusion of \$15 million of equity capital. The issuance of New Equity Interests in  
7 connection with the Backstopped Rights Offering will dilute the New Equity Interests of  
8 Reorganized Ahern received under the Noteholder Plan by a pro rata amount based upon the  
ultimate enterprise value of Reorganized Ahern as determined by the Bankruptcy Court. The  
proceeds of the Backstopped Rights Offering will be used to, among other things, fund Distributions  
required by the Noteholder Plan and provide Reorganized Ahern with additional working capital  
upon its emergence from bankruptcy.

9 The Proponents have entered into a Plan Support Agreement pursuant to which they will  
10 agree, subject to certain conditions, to support the Noteholder Plan and, after entry of an order  
11 approving a disclosure statement for the Noteholder Plan, to vote in favor of the Noteholder Plan.  
The Plan Support Agreement, if finalized, will be included in the Noteholder Plan Supplement.

#### 12 **B. Purpose Of This Noteholder Disclosure Statement**

13 The purpose of this Noteholder Disclosure Statement is to provide those Holders of Claims  
14 against and Equity Interests in the Debtor that are entitled to vote on the Noteholder Plan with  
adequate information to make an informed decision as to whether to accept or reject the Noteholder  
Plan. On [\_\_\_\_], 2013, after notice and a hearing, the Bankruptcy Court issued an order (the  
15 "Noteholder Disclosure Statement Order") approving this Noteholder Disclosure Statement as  
16 containing adequate information of a kind and in sufficient detail to enable a hypothetical,  
reasonable investor being solicited to make an informed judgment whether to accept or reject the  
17 Noteholder Plan. APPROVAL OF THIS NOTEHOLDER DISCLOSURE STATEMENT BY THE  
BANKRUPTCY COURT CONSTITUTES A DETERMINATION THAT THE NOTEHOLDER  
18 DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION REGARDING THE  
NOTEHOLDER PLAN, BUT DOES NOT CONSTITUTE A DETERMINATION BY THE  
19 BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE NOTEHOLDER PLAN.

#### 20 **C. Summary Of Classification And Treatment Of Claims And Equity Interests** 21 **Under The Noteholder Plan**

22 As described more fully in this Noteholder Disclosure Statement, the Noteholder Plan  
23 provides for significant Distributions on account of certain Allowed Claims in the form of Cash  
24 payments, assumption of specified liabilities, and new equity instruments. The Noteholder Plan  
Distributions will be in various amounts and will take various forms, depending on the classification  
25 and treatment of any particular Claim against or Equity Interest in the Debtor. The following table  
summarizes the classification and treatment of Claims and Equity Interests under the Noteholder  
Plan. The Claim estimates in the table are based upon the estimates offered in the Debtor's  
26 Disclosure Statement dated November 30, 2012, and such estimates are subject to further change and  
modification, because the Proponents have not had access to the Debtor's Claims register to verify  
27 the accuracy of the estimates. *For a more detailed description of the classification and treatment of*  
28 *Claims and Equity Interests under the Noteholder Plan, please see Article III hereof.*

Class	Claim	Treatment	Status	Estimated Amount of Claims	Estimated Recovery (as % of Claim amount)
1	Other Secured Claims	At the Proponents' option before the Effective Date: (a) Reinstatement or (b) (i) payment in full in Cash, (ii) proceeds from the sale of the Collateral securing the Other Secured Claims, (iii) return of the Collateral securing the Other Secured Claims or (iv) such other Distribution that meets the requirements of section 1129 of the Bankruptcy Code.	Unimpaired	\$258,500	100%
2	Other Priority Claims	Payment in full in Cash upon the latest of: (a) the Effective Date or as soon thereafter as practicable; (b) such date as may be fixed by the Bankruptcy Court; (c) the first Business Day following the fourteenth (14th) day after such Claim is Allowed; and (d) such date as agreed upon by the Holder of such Claim and the Debtor or Reorganized Ahern.	Unimpaired	\$71,400	100%
3	First Lien Term Loan Claims	Payment in full in Cash upon the latest of: (a) the Effective Date or as soon thereafter as	Unimpaired	\$111.5 million	100%

Class	Claim	Treatment	Status	Estimated Amount of Claims	Estimated Recovery (as % of Claim amount)
		practicable; (b) such date as may be fixed by the Bankruptcy Court; and (c) such date as agreed upon by the Holder of such Claim and the Debtor or Reorganized Ahern			
4	Second Lien Notes Claims	Distribution of Pro Rata share of New Equity Interests of Reorganized Ahern, occurring upon the later of: (a) the Effective Date or as soon thereafter as reasonably practicable; and (b) such date as may be fixed by the Bankruptcy Court.	Impaired	\$267.7 million	[less than 100]%
5	Insider Claims	Semi-annual payments over a period of 2 years with interest accruing on such Allowed Claim at rate to be determined by the Bankruptcy Court, upon the later of: (a) the resolution of all litigation relating to, or arising out of Insider Causes (pursuant to one or more Final Orders); (b) resolution of Avoidance Actions against an Insider who is a Holder of an Insider Claim; and (c)	Impaired	\$710,574	100%

Class	Claim	Treatment	Status	Estimated Amount of Claims	Estimated Recovery (as % of Claim amount)
		such other date as may be fixed by the Bankruptcy Court.			
6	Personal Injury Claims	Payment in full in Cash upon the Effective Date, or as soon as reasonably practicable thereafter.	Unimpaired	\$2,377,000	100%
7	General Unsecured Claims	Payment in full in Cash upon the Effective Date, or as soon as reasonably practicable thereafter.	Unimpaired	\$3 million	100%
8	Equity Interests	Holders of Existing Equity Interests voting to accept shall receive their pro rata Distribution of New Warrants; Holders voting to reject shall not retain any property or Interest in Reorganized Ahern.	Impaired	N/A	[...]%

#### D. Confirmation Hearing

Pursuant to section 1128 of the Bankruptcy Code, the Confirmation Hearing will commence on [\_\_\_\_], 2013, beginning at [\_\_\_\_] (**prevailing Pacific time**), before the Honorable Bruce T. Beesley, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Nevada, 300 Booth Street, Reno, Nevada 89509. The Bankruptcy Court has directed that objections, if any, to confirmation of the Noteholder Plan be served and filed so that they are received on or before [\_\_\_\_], 2013 at [\_\_\_\_] (**prevailing Pacific time**). The Confirmation Hearing may be adjourned from time to time without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing. Subsequent to the Confirmation Hearing, the Bankruptcy Court may issue an order confirming the Noteholder Plan (the “Confirmation Order”).

## **E. Overview Of Chapter 11 Process**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize its business for the benefit of itself, its creditors, and its equity interest holders. In addition to permitting rehabilitation of a debtor, another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated equity interest holders with respect to the distribution of a debtor's assets.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of a debtor in property as of the petition date. The Bankruptcy Code provides that a debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a plan of reorganization is the principal objective of a chapter 11 reorganization case. A plan of reorganization sets forth the terms for satisfying claims against and equity interests in a debtor. Upon confirmation of a plan of reorganization, it is binding on a debtor, any issuer of securities under the plan, and any creditor or equity interest holder of a debtor. Subject to certain limited exceptions, the confirmation order discharges a debtor from any debts that arose prior to the date of confirmation of the plan and substitutes therefor the obligations specified under the confirmed plan.

After a chapter 11 plan has been filed, holders of certain claims against and equity interests in a debtor are permitted to vote to accept or reject such plan. Before soliciting acceptances of the proposed plan, however, a debtor is required under section 1125 of the Bankruptcy Code to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan.

The Proponents are submitting this Noteholder Disclosure Statement to Holders of Claims against and Equity Interests in the Debtor to satisfy the requirements of section 1125 of the Bankruptcy Code. This Noteholder Disclosure Statement sets forth specific information regarding the pre-bankruptcy history of the Debtor, the nature and progress of the Chapter 11 Case and the anticipated organizational and capital structure as well as the operations of the Debtor's properties after confirmation of the Noteholder Plan and emergence from chapter 11. This Noteholder Disclosure Statement also describes the Noteholder Plan, alternatives to the Noteholder Plan, effects of confirmation of the Noteholder Plan, certain risk factors associated with the debt and equity securities that will be issued to Holders of certain Classes of Claims and Equity Interests and the manner in which Distributions will be made under the Noteholder Plan. In addition, this Noteholder Disclosure Statement discusses the confirmation process and the voting procedures that Holders of Claims and Equity Interests entitled to vote must follow in order for their votes to be counted.

## **ARTICLE I. GENERAL INFORMATION ABOUT THE DEBTOR**

### **A. The Debtor's Business**

A material portion of the following description of the Debtor's business has been prepared based on disclosures set forth in the Debtor's Disclosure Statement, pleadings and reports filed with the Bankruptcy Court and other public sources of information. The Proponents have had limited access to the Debtor's management and books and records, and therefore have not had the ability to

1 conduct reasonable diligence to verify the accuracy of the information in the Debtor's Disclosure  
2 Statement.

### 3 1. Corporate Structure

4 The Debtor is a Nevada corporation organized on December 23, 1997 through the merger of  
5 Ahern Renters Center, Inc., a Nevada corporation, and Ahern Rentals SW, Inc., a Nevada  
6 corporation. The Debtor's shares are held 97% by Don F. Ahern as Trustee of the DFA Separate  
Property Trust and 3% by John Paul Ahern, Jr.

### 7 2. Operations

8 The Debtor operates an equipment rental company that additionally sells new and used rental  
9 equipment, parts, and supplies related to its rental equipment, and merchandise used by the  
10 construction industry. Further, the Debtor provides maintenance and repair services. As of  
11 September 30, 2012, the Debtor's rental fleet contained 37,750 total rental items, including 20,063  
12 high reach units, including fork lifts, boom lifts, and scissor lifts. As of that same date, the Debtor's  
rental fleet also contained 17,687 general rental units, including backhoes, skid steers, skidloaders,  
trenchers, compressors, generators, light towers, welders, lawn and garden equipment and hand  
tools. The Debtor's business operates through 74 rental branches located in 22 states.

13 The Debtor's level of equipment rental revenue is sensitive to overall macro-economic  
14 conditions, particularly the level of activity within the non-residential construction industry, as well  
15 as to factors specific to the Debtor, such as the size and condition of the Debtor's equipment rental  
fleet, the utilization level of this rental fleet, the level of rental rates, the length of time the  
equipment is on rent, and general weather conditions within the Debtor's geographic markets.

16 For financial reporting purposes, the Debtor's revenues are divided into three categories: (a)  
17 equipment rentals and related, including revenues from renting equipment and related revenues such  
as fees charged for equipment delivery, damage waivers, repair of rental equipment, and fuel; (b)  
18 sales of rental equipment; and (c) sales of new equipment and other.

19 In order to measure the financial performance of its business, the Debtor reports and  
20 monitors its level of "EBITDA" (Earnings Before Interest Expense, Income Taxes, Depreciation and  
21 Amortization) generation as an important financial metric. Adjusted EBITDA represents an  
22 adjustment to the company's EBITDA for items considered extraordinary and non-recurring  
23 ("Adjusted EBITDA"). EBITDA is a commonly used financial metric utilized by companies within  
the equipment rental industry. Between 2005 and 2008, the Debtor's Adjusted EBITDA increased  
24 from \$80.2 million to \$150.1 million as the Debtor benefited from strong growth of non-residential  
25 construction activity, particularly in the Las Vegas market. Subsequent to 2008, the Debtor's  
26 financial performance was adversely impacted by the severe economic recession, and resulting  
27 significant reduction in non-residential construction spending, as more fully described later in this  
document in "Events Leading to the Chapter 11 Case." The Debtor's Adjusted EBITDA declined  
28 from \$150.1 million in 2008 to \$67.5 million in 2009 and to \$52.7 million in 2010. According to the  
Debtor, its lowest pre-bankruptcy financial results were realized midway through 2010 when the  
Debtor's Last Twelve Months ("LTM") Adjusted EBITDA through the quarter ended June 30, 2010  
was \$46.4 million.

1 According to the Debtor, in response to the economic downturn it attempted to implement  
 2 initiatives that it believed might address the changed business environment. These initiatives  
 3 included: (a) significant geographic redeployment of its rental fleet from Las Vegas to other markets;  
 4 (b) the opening of twenty-four (24) branches in 2009 and 2010 in new markets; (c) cost reductions,  
 5 (d) reduced capital expenditures; and (e) a focus on customers in segments other than non-residential  
 construction. Since the Debtor's LTM Adjusted EBITDA of \$46.4 million in June 2010, the  
 Debtor's LTM Adjusted EBITDA has increased to \$101.5 million for the LTM period ending  
 September 30, 2012.

6 The Debtor's operating results have traditionally been highly dependent on the strength of  
 7 the economy of Las Vegas, Nevada, accounting for approximately 25% of revenues in 2009, 19% of  
 8 revenues in 2010, and 12% of revenues in 2011, and the rapid growth of the Las Vegas population  
 and accompanying economic growth contributed significantly to Debtor's growth in revenues over  
 years prior to 2008.

### 9 **3. The Debtor's Prepetition Equity And Management Structure**

10 Don F. Ahern has been Debtor's President, Chief Executive Officer and a member of the  
 11 Debtor's board of directors since February 1994. Prior to that, since 1978 Mr. Ahern was the sole  
 12 proprietor of Los Arcos Equipment, an equipment rental company. Mr. Ahern has over thirty (30)  
 years of experience in the equipment rental industry.

13 Evan B. Ahern has been the Debtor's Executive Vice President since March 2004 and joined  
 14 the Debtor's board of directors in April 2004. He served as Chief Information Officer from 1998 to  
 15 May 2007. Between 1993 and 1998, Mr. Ahern was responsible for managing and implementing the  
 16 Debtor's technology infrastructure. From 1990 through 1993, Mr. Ahern held various other  
 17 positions with Debtor. Mr. Ahern has been and continues to be involved in nearly every aspect of  
 the Debtor's operations. He spends much of his current time in business development activities,  
 branch level process reengineering and training, and technology integration into every aspect of the  
 Debtor's business to improve operational efficiencies and effectiveness.

18 Howard Brown has been the Debtor's Chief Financial Officer since September 1997. He  
 19 joined the Debtor's board of directors in April 2004. He has over thirty-five (35) years of finance  
 20 experience. Prior to joining the Debtor, from October 1995 through September 1997, he was Chief  
 21 Financial Officer of the H&O Foods division of Rykoff-Sexton, Inc. (now known as U.S.  
 Foodservice, Inc.), the largest food service distributor in Las Vegas, Nevada. From September 1992  
 through October 1995, he was Chief Financial Officer of H&O Foods, Inc.

22 Mark J. Wattles joined the Debtor's board of directors in April 2004. Mr. Wattles founded  
 23 Hollywood Entertainment Corporation ("Hollywood"), a chain of video rental and game stores, in  
 24 June 1988, and until September 1998 he served as Hollywood's Chairman of the Board, President,  
 25 and Chief Executive Officer. From August 1998 through June 2000, Mr. Wattles left his full-time  
 position at Hollywood and served as Chief Executive Officer of Reel.com, then a wholly-owned  
 26 subsidiary of Hollywood. In August 2000, Mr. Wattles returned full time to Hollywood to assist  
 with changes in its business strategy. He served as President of Hollywood from January 2001 until  
 January 2004 and as Chief Executive Officer from January 2001 until February 2005. Since January  
 27 2005, Mr. Wattles has served as President of Wattles Capital Management, LLC, a capital  
 28

1 management company that invests in public and private companies providing consumer products and  
2 services.

3 P. Enoch Stiff joined Debtor's board of directors in April 2004. Mr. Stiff has been the  
4 managing partner of the Executive Management Group, a consulting firm specializing in effective  
5 management practices for senior executive teams of midsize businesses, since November 2002.  
6 Additionally, since January 2004, Mr. Stiff has been a partner in the Value Management Group, a  
7 Chicago-based investment management company that focuses on manufacturing companies. In  
8 February 2008, Mr. Stiff became President and Chief Executive Officer of American Sportworks, a  
9 company that manufactures various types of utility vehicles. From September 2000 to November  
10 2002, Mr. Stiff provided independent business consulting services to executive management groups.  
11 From September 1996 to September 2000, Mr. Stiff was the President, Chief Executive Officer and a  
12 member of the board of directors of OmniQuip International, Inc., a North American manufacturer  
13 of telescopic material handlers, aerial work platforms and other material handling equipment. From  
14 August 1989 to September 1996, Mr. Stiff was the President and Chief Executive Officer of TRAK  
15 International, Inc. ("TRAK"), a wholly owned subsidiary of OmniQuip International, Inc. He  
16 previously served as the Chief Operating Officer of TRAK from November 1987 to August 1989.

17 Timothy N. Lotspeich has been the Debtor's Senior Vice President of Risk Management and  
18 Transportation since April 2005. From December 1995 until April 2005, he served as the Debtor's  
19 Senior Vice President and was responsible for the Debtor's floating fleet, transportation and risk  
20 management. Mr. Lotspeich has approximately twenty-three (23) years of experience in the  
21 equipment rental industry. From July 1986 through December 1995, Mr. Lotspeich served as the  
22 Debtor's California regional manager responsible for supervising operations and sales for all of the  
23 Debtor's California branches. From April 1983 through June 1986, Mr. Lotspeich served as  
24 manager of Debtor's Bloomington, California branch and was responsible for operations and sales  
25 for that branch. Prior to joining the Debtor, from 1972 through June 1982, Mr. Lotspeich was a  
26 customer service representative for Grove Manufacturing, a large manufacturer of high reach  
27 equipment.

28 D. Kirk Hartle has been Debtor's Senior Vice President of Finance and Treasurer since  
March 2009; previously, Mr. Hartle served as Vice President of Finance beginning in September  
2007 and prior to that he served as the Debtor's Director of Finance from the time he was hired in  
February 2004. His responsibilities include oversight of all accounting and financial reporting for  
Debtor. During his career, Mr. Hartle has held senior management positions with KPMG LLP and  
Deloitte LLP. Prior to joining Ahern Rentals, Mr. Hartle was chief financial officer for five years  
with a publicly-held golf retail and sports entertainment company. Mr. Hartle also is a past-  
president of the University of Nevada, Las Vegas Alumni Association and served on its Board of  
Directors for thirteen (13) years.

#### 4. Affiliated Entities And Transactions

The Debtor has entered into numerous transactions with affiliated entities and persons.  
Below is a description of affiliated transactions based upon information provided by the Debtor in  
the Debtor's Disclosure Statement. Despite requests by the Proponents for information regarding  
affiliated transactions, the Proponents have received almost no information beyond the disclosure  
below and, in addition, the Proponents do not know if the affiliated transactions listed below  
comprise all of the Debtor's affiliated transactions. The Proponents have issued discovery regarding

1 affiliated transactions and will investigate the propriety of all affiliated transactions and reserve all  
2 rights to pursue actions and claims that may exist. The Noteholder Plan vests Reorganized Ahern  
3 with all claims and actions relating to or arising from affiliated transactions, which may be pursued  
4 by Reorganized Ahern after the Effective Date if any claims or actions are determined to exist.

5 (a) Ahern IT, LLC ("Ahern IT"). Evan B. Ahern owns 100% of Ahern IT. Ahern IT is an information technology (IT) reseller that purchased dark fiber and other equipment  
6 for the Debtor, which provided the Debtor improved connectivity to its data center and enhanced its  
7 disaster recovery system. Ahern IT manages the Debtor's bandwidth with respect to its data and  
8 communication needs. Evan B. Ahern is the son of Don F. Ahern.

9 (b) American Sportworks ("AS"). AS manufactures utility trucks similar to golf  
10 carts that transport tools and other equipment on jobs sites. The Debtor has alleged that it "buys and  
11 sells AS vehicles for a profit." P. Enoch Stiff, a board director of the Debtor, owned 100% of AS  
12 until he sold his interest in AS on or about November 7, 2012. Neither Mr. Stiff nor the Debtor has  
13 provided any information on, among other things, (i) the profits realized by the Debtor for the sale of  
14 AS vehicles, (ii) the fairness of the transactions between the Debtor and AS; (iii) whether any  
15 interests in AS have been transferred to an Insider of the Debtor; or (iv) any transactions between  
16 Mr. Stiff and any Insider of the Debtor on account of or relating to transactions between AS and the  
17 Debtor.

18 (c) A & K 67, LLC ("A&K"). Don F. Ahern owns 25% of A&K. A&K owns a  
19 77-foot boat located in the San Diego Bay. As consideration for the Debtor's sales force having  
20 access to the boat to entertain and develop customer relationships, the Debtor pays 25% of A&K's  
21 costs. The Debtor has provided no information regarding the fairness of the contractual arrangement  
22 between the Debtor and A&K, or whether the Debtor receives reasonably equivalent value in  
23 exchange for the payments it makes to A&K.

24 (d) DFA, LLC ("DFA"). Don F. Ahern owns 100% of DFA. DFA locates and  
25 acquires real property, arranges the financing, and leases such property under triple net lease  
26 arrangements. The majority of DFA's real property is leased by the Debtor. DFA locates and  
27 purchases real property based on the Debtor's needs, specifications, and target markets, thus limiting  
28 the Debtor's upfront capital investments in new stores and markets. The Debtor has alleged that all  
leases for DFA properties are approved by the Debtor's independent board members. The Debtor  
has provided no information with regard to the fairness of the lease terms allegedly approved by the  
independent board members.

(e) The DFA Family Limited Partnership (the "DFA LP"). Don F. Ahern is a  
general partner owning 1% of DFA LP, and Evan Ahern and Ryan Ahern are both limited partners  
each owning 49.5%. DFA LP owns the real property located at 4241 S. Arville in Las Vegas,  
Nevada, which property is a maintenance, paint, and cosmetic machine shop leased to the Debtor.  
DFA LP also owns life insurance policies insuring Don F. Ahern. Evan Ahern and Ryan Ahern are  
sons of Don F. Ahern.

(f) Diamond A Equipment, LLC (“Diamond A”). Don F. Ahern owns 100% of Diamond A. Diamond A is a Case tractor dealership located in Oxnard, California. The Debtor has alleged that Diamond A “also sells the Debtor’s equipment at book value plus a reasonable mark-up, resulting in a profit for the Debtor.” The Debtor has further alleged that as “a Case tractor dealer, Diamond A can buy parts and has access to technical services that support the Debtor’s rental fleet.” The Debtor has provided no information to verify these statements.

(g) Don and Paul, LLC (“D&P”). Don F. Ahern owns 85.5% of D&P, and John Paul Ahern, Jr. owns 14.5%. D&P owns various parcels of real property located on West Bonanza in Las Vegas, Nevada, which property is a high reach and general rental store leased to the Debtor. Jon Paul Ahern, Jr. is Don F. Ahern’s brother. The Debtor has provided no information on the fairness of the lease terms or other transactions between the Debtor and D&P.

(h) Equipment Connections, LLC (“EC”). Janis Ahern owns 100% of EC. EC performs consulting work and special projects for Debtor, and uses its relationships to sell and rent Debtor’s equipment.

(i) Fanterior, LLC (“Fanterior”). Don F. Ahern owns 49% of Fanterior. Fanterior imports promotional items such as plastic cups and other products displaying the Debtor’s name(s) and logo(s).

(j) Hutt Aviation, Inc. (“Hutt”). Don F. Ahern owns 50% of Hutt. Hutt operates a facility at the Minden-Tahoe airport in Minden, Nevada, where it provides aircraft fuel pumping and other aircraft support. Approximately 1% of Hutt’s sales are to the Debtor. From time to time, Hutt rents snow removal equipment from Debtor.

(k) XFS, Inc. d/b/a Xtreme Financial Services (“XFS”). Don F. Ahern owns 100% of XFS. XFS provides financing for customers who do not qualify under the Debtor’s credit specifications. XFS ordinarily provides financing on transactions of approximately \$10,000.

(l) Xtreme Manufacturing, LLC (“Xtreme”). Don F. Ahern owns 96.74% of Xtreme. Xtreme is a manufacturer of forklifts, related parts, and heavy duty steel cubes for offices, housing and other uses that require reinforced structure for remote operations. Xtreme sells forklifts and metal cubes to Debtor. The Debtor sells forklifts manufactured by Xtreme.

## **B. The Debtor’s Capital Structure**

### **1. First Lien Credit Facility**

On January 8, 2010, the Debtor, as “Borrower” (as defined therein), entered into a Second Amended and Restated Loan and Security Agreement (as amended, supplemented or otherwise modified, the “First Lien Credit Agreement”; and, together with all security, pledge and guaranty agreements and all other documentation executed and/or delivered in connection with any of the foregoing, including without limitation, the Intercreditor Agreement, each as amended, supplemented, or otherwise modified, the “First Lien Documents”) with Bank of America, as administrative agent (in such capacity, the “First Lien Agent”), Wells Fargo Bank, National Association (“Wells Fargo Bank”), as collateral agent (in such capacity, the “First Lien Collateral Agent”) and certain Revolving Lenders (as defined therein) and “last out” Term Lenders (as defined therein, and, collectively with the Revolving Lenders, the “First Lien Lenders”). The First Lien

Credit Agreement made credit facilities available to Debtor consisting of a \$350,000,000 revolving credit facility (the “Revolving Credit Facility”) and a \$95,000,000 term loan (as thereafter amended, the “Term Loan” and, together with the Revolving Credit Facility, as amended, restated, supplemented, or otherwise modified, the “First Lien Credit Facility”). Pursuant to the First Lien Documents, the “Revolving Obligations” under, and as defined in, the First Lien Credit Agreement are payable prior to the “Term Loan Obligations” under, and as defined in, the First Lien Credit Agreement.

Pursuant to the First Lien Credit Agreement, the original maturity date for the Revolving Credit Facility was August 21, 2011 (the “Revolving Maturity Date”), and the original maturity date for the Term Loan was December 15, 2012, at which time all outstanding principal and interest amounts became due and payable.

## 2. Second Lien Notes

The Debtor is also a party to that certain Indenture, dated as of August 18, 2005 (as amended, supplemented or otherwise modified, the “Second Lien Indenture”; the notes issued thereunder; and together with the Second Lien Indenture and all security, pledge and guaranty agreements and all other documentation executed and/or delivered in connection with the foregoing, each as amended, supplemented or otherwise modified, the “Second Lien Documents” and the indebtedness owed pursuant to the Second Lien Documents, plus accrued and unpaid interest thereon and fees and expenses as provided in the Second Lien Documents, collectively, the “Second Lien Obligations”) among the Debtor, as borrower, Wells Fargo Bank, as collateral agent and trustee (in such capacity, the “Second Lien Agent”), and the Noteholders (collectively, the “Second Lien Noteholders”; and together with the First Lien Lenders, the “Lenders”). Under the Second Lien Indenture, second priority senior secured notes (the “Second Lien Notes”) are due August 15, 2013, bearing interest at 9¼% payable semi-annually on February 15 and August 15. Pursuant to the Second Lien Indenture, the Second Lien Notes were sold in two tranches for an aggregate purchase price of \$200,000,000 in the first tranche and \$90,000,000 in the second tranche. The Second Lien Notes are secured on a second-priority basis by liens on all of Debtor’s assets that secure Debtor’s obligations under the First Lien Credit Facility. As of the Petition Date, outstanding liabilities from the Second Liens Notes payable totaled \$236,666,667 in actual principal outstanding (not including accrued unpaid interest).

On August 18, 2005, the Debtor, as borrower, entered into an Intercreditor Agreement (as amended, supplemented or otherwise modified, the “Intercreditor Agreement”) among Wachovia, as First Lien Collateral Agent and Control Agent for the First Lien Collateral Agent and the Second Lien Collateral Agent (each as defined therein) and Wells Fargo Bank, as Trustee under the Indenture and as Second Lien Collateral Agent (each as defined therein), providing the Revolving Credit Facility in connection with the 2005 Loan Agreement, which Intercreditor Agreement permitted creditor facilities available to the Debtor consisting of a \$175,000,000 revolving credit facility.

On December 23, 2009, the Debtor entered into an Amendment No. 1 to Intercreditor Agreement (the “2009 First Intercreditor Amendment”) with Wachovia and Wells Fargo Bank, which 2009 First Intercreditor Amendment permitted credit facilities available to the Debtor consisting of a maximum \$396,000,000 revolving credit facility.

**C. Events Leading To The Chapter 11 Case**

**1. Economic Pressures And The Debtor's Responses**

Through the Debtor's primary business of equipment rental, the Debtor makes capital investments to expand its rental fleet in exchange for the potential rental revenue streams generated from customers including construction and industrial companies, municipalities, manufacturers, utilities and homeowners who prefer to rent equipment as an alternative to buying the equipment. To generate rental revenue streams in excess of the capital invested into the continually depreciating equipment so as to turn a profit, the Debtor is consequently dependent upon its customers' continuing demand for the rental of such equipment over the lifetime of that equipment. As such, the Debtor's business is highly dependent on the level of equipment utilization, at acceptable rates, in order to generate ongoing rental revenue and operating profitability. In addition, the Debtor attempts to balance capital expenditures in new equipment to meet increases in demand for new rental opportunities with the risk of reduced demand for such equipment before the value of that equipment has been recouped through rental revenue.

Because of its dependence on rental revenue from the non-residential construction industry, the Debtor was adversely impacted by the downturn in construction activity during the recent economic recession. Specifically, the Debtor was impacted by a reduction in both new construction projects as well as the often-abrupt cancellation of projects for which construction had already begun, which caused the return to the Debtor of equipment on rent, resulting in a decline in equipment utilization compounded by pressure on rental rates, which in turn resulted in reduced revenues and levels of operating performance. The Debtor's revenues were necessarily harmed in the wake of economic concerns both nationally and to a greater extent in the Las Vegas market as the Debtor's ability to successfully rent its equipment inventory purchased during periods of growth in the construction industry was adversely impacted during the recession.

To adapt to the construction downturn, the Debtor has attempted a number of strategies since 2009 to both retain and develop new rental streams. Among these strategies, the Debtor redeployed unutilized rental units to existing branch locations with higher demand and also opened branches in new geographies with high growth potential. The Debtor opened seventeen (17) new rental branches in 2009, and opened seven (7) new rental branches in 2010. The Debtor was able to redeploy some of its existing rental units to these new locations from existing branch locations. This strategy was used in part to relocate rental equipment following the completion of the City Center project in Las Vegas, which was completed in late 2009 and resulted in a surplus of rental units in Las Vegas.

The Debtor has stated that by redeploying existing rental fleet and opening new branches in 2009 and 2010, it was able to reduce capital expenditures for purchases of new rental equipment. Additionally, the Debtor has stated that it was able to limit new capital expenditures by selling excess rental fleet as market conditions warranted. In 2007 and 2008, the Debtor invested \$191.6 million and \$178.6 million, respectively. Capital investments in 2009 were \$15.9 million. Capital investments in 2010 were negative \$5.1 million.

The Debtor's equipment rental fleet has a large concentration of aerial equipment. The average age of the rental fleet has increased, which has led and will continue to lead to increased repair, maintenance and equipment replacement costs.

1 Additionally, in response to the economic downturn, the Debtor has undertaken cost  
2 containment through reductions in personnel and employee benefits, renegotiation of vendor pricing  
3 structures, and reduced commissions and bonuses for senior management. To maintain and increase  
4 equipment utilization, the Debtor has also expanded its customer base into infrastructure related  
industries, alternative energy, and other end-user markets to participate in rental demand distinct  
from the non-residential construction sector.

## 5 **2. Financial Performance**

6 Revenues for the nine months ended September 30, 2012 have increased to \$274.8 million  
7 from \$241.1 million compared to the nine month period ended September 30, 2011 and from \$213  
8 million compared to the nine month period ended September 30, 2010. From Adjusted EBITDA of  
\$46.4 million for the LTM period ended June 30, 2010, the Debtor's Adjusted EBITDA for the LTM  
period ended September 30, 2012 has increased to \$101.5 million.

### 9 **D. Attempts To Reorganize Debt Outside Bankruptcy**

10 On July 1, 2010, Debtor engaged Oppenheimer & Co. Inc. ("Oppenheimer") to assist the  
11 Debtor in obtaining a one-year extension of its Revolving Credit Facility. Thereafter, the Debtor and  
12 Oppenheimer engaged in negotiations with the Debtor's creditors to obtain the requisite approval of  
all Lenders for an extension of the Revolving Maturity Date.

13 On February 14, 2011, the Debtor entered into forbearance agreements with the Lenders,  
14 Liberty Harbor Master Fund I, L.P. (as Term Loan Lender) and Platinum (as majority Second Lien  
Notes Holder). On February 15, 2011, the Debtor failed to make a semi-annual payment on the  
15 Second Lien Notes, and no payments have been made on the Second Lien Notes since that time. On  
16 March 1, 2011, the Debtor failed to make a monthly interest payment on the Term Loan, and no  
17 further payments were made on the Term Loan until the Petition Date, after which the Debtor began  
making payments on the Term Loan pursuant to the Final DIP Order.

18 By June 2011, the Debtor had received preliminary approval for the one-year extension from  
19 all but three of the Revolving Lenders and from all of the Term Lenders. In order to effectuate the  
one-year extension, the Debtor needed 100% of the Revolving Lenders to approve it.

20 On August 21, 2011, the Revolving Credit Facility matured. At this time, Bank of America  
21 began to make advances to the Debtor as Agent (the "Agent Advances") to fund the Debtor's  
22 continuing operations. The Debtor continued to negotiate with Bank of America, the Term Lenders  
and, from time to time, some of the Second Lien Lenders for the four months leading up to the  
Petition Date to effectuate the extension of the Revolving Credit Facility and agreed upon the DIP  
Loan (defined below) to essentially effectuate the terms of the extension in bankruptcy.

### 24 **E. Commencement Of Chapter 11 Cases**

25 On December 22, 2011 (the "Petition Date"), the Debtor filed a voluntary petition for relief  
26 under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage  
its properties as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

**F. Significant Events During The Chapter 11 Case**

**1. First Day Motions**

On or about December 23, 2011, the Bankruptcy Court approved certain “first day” orders on an interim basis that were designed to minimize the disruption of the Debtor’s business operations and to facilitate its reorganization. On January 27, 2012, the Bankruptcy Court held a hearing and approved the Debtor’s requested first day relief on a final basis.

**2. The DIP Loan And Cash Collateral**

Concurrently with the above-mentioned first day motions, the Debtor filed a motion to approve post-petition financing under, inter alia, section 364 of the Bankruptcy Code (the “DIP Financing Motion”) [ECF No. 17]. On January 3, 2012, an interim order was entered [ECF No. 95].

Following the filing of the DIP Financing Motion and prior to the hearing on January 27, 2012, the Debtor negotiated with the DIP Lenders (as defined therein) regarding the terms of the final order on the DIP Financing Motion. The Debtor also extensively negotiated the terms of a stipulation with the Majority Term Lenders (as defined therein) regarding the relief requested in the DIP Financing Motion and the provision of adequate protection to the Term Lenders. On January 31, 2012, the Bankruptcy Court entered a final order approving the DIP Financing Motion [ECF No. 329] (the “Final DIP Order”) and the stipulation with the Majority Term Lenders regarding the Debtor’s use of cash collateral and adequate protection. The Final DIP Order authorized the Debtor to obtain postpetition financing under an asset-based revolving credit facility in an amount up to the aggregate principal amount of \$350 million outstanding at any time on a final basis (including a \$10 million sub-limit for letters of credit) (the “DIP Loan”). Under the Final DIP Order, the Revolving Credit Facility was repaid in full and replaced by the DIP Loan.

**3. Information Regarding The Proponents**

For information regarding the Proponents, see that certain Supplemental Verified Statement of the Second Lien Noteholder Group Pursuant to Bankruptcy Rule 2019 [ECF No. 1580].

**4. Other Significant Motions And Postpetition Events**

**a. Retention and Employment of Professionals**

Various applications were filed, and subsequently approved, for employment of Professionals in connection with the Chapter 11 Case. Such applications included: (i) the Debtor’s application to employ Gordon Silver as its general bankruptcy counsel [ECF No. 126]; (ii) the Debtor’s application to employ CRG Partners Group, LLC as its financial and restructuring advisor [ECF No. 128]; (iii) the Debtor’s application to employ Piercy Bowler Taylor & Kern as its auditor and accountant [ECF No. 96]; (iv) the Debtor’s application to employ Stoel Rives LLP as its special counsel [ECF No. 132]; (v) the Debtor’s application to employ Oppenheimer & Co., Inc., as its financial advisor and investment banker [ECF No. 162]; (vi) the Debtor’s application to employ Sea Port Group Securities, LLC as its financial advisor and investment banker [ECF No. 164]; (vii) the Debtor’s application to employ DLA Piper LLP (US) as its bankruptcy co-counsel [ECF No. 429]; and (viii) the Debtor’s application to employ and compensate certain Professionals in the ordinary course of business [ECF No. 76] (Professionals covered by this application consist of various outside

1 Professionals whom the Debtor employed prior to filing the Chapter 11 Case, including law firms  
2 and accountants in various non-bankruptcy matters ranging from defending personal injury and  
3 workers' compensation suits, to providing advice on various general litigation and corporate related  
4 issues).

5 b. Schedules and Statements

6 On January 26, 2012, the Debtor filed its schedules of assets and liabilities and statements of  
7 financial affairs, other than Schedule F. On January 27, 2012, the Debtor filed Schedule F.

8 c. Administration of Personal Injury Claims

9 The Debtor maintains automobile, general liability, and umbrella policies covering personal  
10 injury liability. The Debtor renews its policies or purchases new policies on or about May 10 of  
11 each year. Generally, the Debtor's automobile policies have a coverage limit of \$1 million per  
12 accident, with no aggregate limits. Up to and including the 2007-2008 policy year, the Debtor's per-  
13 accident deductible under its automobile policies was \$10,000. For the 2008-2009 through 2011-  
14 2012 policy years, the Debtor's per-accident deductible under its automobile policies was \$50,000.  
15 The present automobile policy does not have a deductible requirement.

16 The Debtor's general liability policies have \$1,000,000 per-occurrence limits with  
17 \$2,000,000 aggregate limits. The self-insured retention ("SIR") obligation under the general liability  
18 policies is \$250,000 per-occurrence. The 2009-2010 general liability policy limited the Debtor's  
19 aggregate SIR obligation to a maximum of \$750,000. For the 2010-2011 through 2011-2012 policy  
20 years, the general liability policies limited Debtor's aggregate SIR obligation to a maximum of  
21 \$650,000.

22 The 2012-2013 general liability policy currently in effect limits the Debtor's aggregate SIR  
23 obligation to a maximum of \$750,000.

24 The Debtor also maintains umbrella insurance, which policies provide coverage for personal  
25 injury liability that exceeds the automobile or general liability policy coverage. Up to and including  
26 the 2010-2011 policy year, the umbrella policies had \$5,000,000 coverage limits. The 2011-2012  
27 and present umbrella policies have \$10,000,000 coverage limits. The Debtor has provided no  
28 information with regard to coverage limits for the 2012-2013 policy year.

Total claims against each of the Debtor's policies in each of the above policy years range  
from \$10,000 to \$13.5 million. Except with respect to the 2008-2009 policy period, the Debtor has  
asserted that it faces no real risk of liability in excess of its policy limits even if the plaintiffs' claims  
were allowed in full. Moreover, the Debtor has declared that many of the asserted claims, including  
the claims in the 2008-2009 policy period, are entirely without merit. The Debtor has not provided  
any detailed information regarding any personal injury claims or its analysis of potential liabilities  
relating to such claims.

In order to centralize and streamline the process of liquidating these personal injury claims,  
the Debtor moved for implementation of alternative dispute resolution procedures pursuant to  
Bankruptcy Rule 9019(b). On March 12, 2012, the Debtor filed its Amended Motion for Order,  
Pursuant to section 105(a) of the Bankruptcy Code and Local Rule 9019, Requiring Each Personal  
Injury Claimant Attend and Participate in a Settlement Conference as a Condition Precedent to

1 Relief from the Automatic Stay [ECF No. 721] (the “ADR Motion”). Pursuant to the Final Order  
 2 approving the ADR Motion, any personal injury claimant was required to file its Claim by April 30,  
 3 2012, thereby ensuring the number of claims asserted will not continue to increase. See ECF No.  
 4 782. Also pursuant to the Final Order, with certain limited exceptions, each personal injury claimant  
 is required to participate in a settlement conference as a condition precedent to relief from the  
 automatic stay to liquidate his or her personal injury claim in a nonbankruptcy forum. See id.

5 d. Affiliated Leases

6 The Debtor is a lessee under numerous leases (the “Affiliated Leases”) with DFA, LLC and  
 7 other entities which are Affiliates of the Debtor by virtue of ownership interests held therein by Don  
 8 F. Ahern. The locations of the Affiliated Leases include, among other things, branch locations,  
 9 administrative offices, storage locations, aircrafts hangers and a 250 acre ranch allegedly intended to  
 10 be used as a training facility. On July 2, 2012 the Debtor filed its Motion to Assume Certain  
 11 Affiliated Nonresidential Real Property Leases, [ECF No. 806] (the “Affiliated Leases Motion”),  
 12 pursuant to which the Debtor sought approval from the Bankruptcy Court to, among other things,  
 13 assume, and in some cases modify the terms of, certain of the Affiliated Leases. Among other  
 modifications, the Affiliated Leases Motion sought to shorten the maturities of the Affiliated Leases  
 by one year from October 2014 to October 2013. Subsequent to the filing of the Affiliated Leases  
 Motion, several parties objected to the relief requested therein and the hearing on such motion was  
 adjourned several times. The hearing on the Affiliated Leases Motion is currently scheduled to be  
 heard in connection with the Confirmation Hearing.

14 e. Mediation

15 In conjunction with Debtor’s request to extend its exclusive right to file a plan, by order  
 16 entered on August 10, 2012, [ECF No. 959], the Bankruptcy Court ordered Debtor and various  
 17 parties in interest to participate in a settlement conference pertaining to plan confirmation issues.  
 18 The settlement conference was conducted on September 6-7, 2012 by Judge William T. Thurman of  
 19 the United States Bankruptcy Court for the District of Utah and several parties in interest attended  
 20 including the Debtor, the Majority Term Lenders, the Committee, the Proponents, the Second Lien  
 Indenture Trustee, certain of the DIP Loan Agents and Kubota Tractor. No consensual resolution  
 was reached concerning plan issues; however, the parties did agree to further mediation with Judge  
 Thurman, which was conducted on September 27, 2012. Again, the parties were unable to resolve  
 their disagreements regarding plan confirmation issues.

21 f. The Debtor’s Plan

22 On November 30, 2012, the Debtor filed the Debtor’s Plan and Debtor’s Disclosure  
 23 Statement. The Debtor’s Plan impairs almost every class of creditors, but allows Don F. Ahern and  
 24 John Paul Ahern, Jr. the two controlling shareholders of the Debtor, to retain all of their equity  
 25 ownership of the Debtor without impairment, resulting in a recovery of 100%. Specifically, the  
 26 Debtor’s Plan proposes to pay the \$111.5 million of First Lien Term Loans either: (a) a Cash  
 27 payment equal to 80% of their Claims conditioned on acceptance of the Debtor’s Plan; or (b) a  
 “cram down” in which the First Lien Term Loan Lenders would be forced to take repayment over a  
 four-year period at 4.25% interest per year (as compared to the 16% interest rate of the current First  
 Lien Term Loan). The Debtor’s Plan proposes to pay the \$267.7 million of Second Lien Notes  
 28 either: (a) a Cash payment equal to 50% of their Claims conditioned on acceptance of the Debtor’s

Plan; or (b) a “cram down” in which they would be forced to take repayment over a seven-year period with only 2% interest accruing per year but not paying any cash interest until year five, and with all principal payments deferred to year seven (as compared to the 9.25% interest rate on the Second Lien Notes when issued). The Debtor’s Plan further proposes to pay Allowed General Unsecured Claims either: (a) a Cash in equal quarterly installments over two (2) years without interest conditioned on acceptance of the Debtor’s Plan; or (b) a “cram down” in which they would be forced to take repayment in equal quarterly installments over five (5) years with only 2% interest accruing per year, or such other interest rate determined by the Bankruptcy Court. The Debtor’s Plan further proposes to pay Allowed Personal Injury Claim up to \$250,000, less defense costs expended on each such insured Allowed Personal Injury Claim, with the balance payable in sixty (60) equal monthly installments, together with interest at the Federal Judgment Rate, commencing on the Effective Date at the latest. The remainder of the creditor classes are discounted or restructured under the Debtor’s Plan, resulting in impairment under the Bankruptcy Code and less than full recovery.

g. The Noteholder Plan

On February 8, 2013, the Proponents filed the Noteholder Plan, which is described more particularly below. The Noteholder Plan will convert all of the Second Lien Notes into New Equity Interests of Reorganized Ahern. Other than the Second Lien Notes Claims, the Noteholder Plan leaves Unimpaired or otherwise pays in full in Cash all of the Debtor’s Claim Holders. Holders of Equity Interests will receive New Warrants. The Noteholder Plan provides Holders of Claims against the Debtor with superior treatment to what such Holders would receive under the Debtor’s Plan, which impairs substantially all of the Debtor’s Claim Holders. As part of the Noteholder Plan, certain of the Noteholders will enter into agreements to acquire additional equity in Reorganized Ahern through a Backstopped Rights Offering in the amount of \$15 million. The proceeds of the Backstopped Rights Offering will be used to, among other things, fund Distributions required by the Noteholder Plan and provide Reorganized Ahern with additional working capital upon its emergence from bankruptcy.

h. Cash Collateral Termination Event and DIP Default

The Debtor’s Plan filed on November 30, 2012 violated the terms of the Majority Term Lender Cash Collateral Stipulation because it did not provide for payment in full in Cash of the First Lien Term Loan Claims on the Effective Date. That violation gave rise to a “Termination Event” under the terms of the Majority Term Lender Cash Collateral Stipulation, and the Majority Term Lenders delivered notice of that Termination Event to the Debtor on December 4, 2012. Despite the triggering of a Termination Event, the Majority Term Lenders have allowed the Debtor to continue to use the cash collateral, but have reserved the right to terminate the Majority Cash Collateral Stipulation at any time. If the Majority Cash Collateral Stipulation is terminated, the Debtor will not be able to use its cash to fund its operations.

The Termination Event and the expiration of exclusivity also constituted default (“DIP Defaults”) under the DIP Facility. Despite the DIP Defaults, the DIP Lenders have continued to make loans to the Debtor and have not accelerated the DIP Facility.

i. Exclusivity and Related Appeals

Under the Bankruptcy Code, a debtor has the exclusive right to file a plan or plans of reorganization for an initial period of 120 days from the date on which a debtor filed a petition for voluntary relief (which may be extended by a bankruptcy court for a period of up to 18 months from the petition date). If a debtor files a plan within this exclusive period, then a debtor has the exclusive right for 180 days from the petition date to solicit acceptances to the plan (which may be extended by a bankruptcy court for a period of up to 20 months from the petition date). During a debtor's exclusive periods, no other party in interest may file a competing chapter 11 plan; however, a court may terminate a debtor's exclusive periods upon request of a party in interest and "for cause." During the Chapter 11 Case, the Debtor requested, and was granted, extensions of the exclusivity period to file the Debtor's Plan and the Debtor's Disclosure Statement, up to and including December 7, 2012.

On December 7, 2012, after reviewing the Debtor's Plan and the Debtor's Disclosure Statement, and supplemental briefs filed by the Debtor, the Proponents and the Majority Term Lenders, the Bankruptcy Court held a hearing to decide whether to grant the Debtor a further extension of exclusivity. The Bankruptcy Court conducted a detailed analysis of the nine "cause" factors, which courts have adopted to determine whether extensions of exclusivity are appropriate. It determined that, among other things, the Debtor had failed to make good faith progress in negotiations with its creditors during the prior twelve months of exclusivity and therefore had not met its burden of demonstrating an entitlement to a further extension of the privilege of exclusivity. At the close of the December 7 hearing, the Debtor orally moved for a stay pending appeal, which the Bankruptcy Court denied.

Two weeks later, on December 20, 2012, the Debtor filed an appeal with the United States District Court for the District of Nevada (the "District Court") of the Bankruptcy Court's termination of exclusivity. Along with the notice of appeal, the Debtor filed an ex parte "emergency" motion for a stay pending its appeal to the District Court. The District Court granted the Debtor a stay pending appeal on December 21, 2012, and set a status conference for January 11, 2013. The Proponents thereafter filed a motion to vacate the stay and dismiss the appeal. On January 14, 2013, the District Court issued an order granting the Proponents' motion vacating the stay and dismissing the appeal for lack of jurisdiction. Thereafter, the Debtor further appealed the District Court's order to the United States Court of Appeals for the Ninth Circuit (the "Ninth Circuit"), and again filed an "emergency" motion with the District Court for a stay pending its appeal to the Ninth Circuit. On January 23, 2013, the District Court issued an order denying the Debtor's motion for a stay pending its appeal to the Ninth Circuit. Two days later, on January 25, 2013, the Debtor again filed an "emergency" motion for a stay pending its appeal to the Ninth Circuit. The Proponents thereafter filed a motion to strike in part, and an opposition to, the Debtor's motion for stay pending appeal. On January 29, 2013, the Ninth Circuit issued an order denying the Debtor's motion for stay pending appeal. The Debtor's appeal to the Ninth Circuit remains pending and the Debtor has requested an expedited briefing schedule.

**ARTICLE II.  
TREATMENT OF UNCLASSIFIED CLAIMS**

Pursuant to section 1123(a)(1) of the Bankruptcy Code, the Claims against the Debtor set forth in this Article II are not classified within any Classes. Holders of such Claims are not entitled

1 to vote on the Noteholder Plan. The treatment of the Claims set forth below is consistent with the  
2 requirements of section 1129(a)(9)(A) of the Bankruptcy Code.

### 3 **A. Administrative Claims**

4 Except with respect to Administrative Claims that are Professional Fee Claims, each Holder  
5 of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release and  
6 discharge of and in exchange for its Allowed Administrative Claim, on the latest of: (i) the  
7 Distribution Date; (ii) the date on which its Administrative Claim becomes an Allowed  
8 Administrative Claim; (iii) the date on which its Administrative Claim becomes payable under any  
9 agreement with the Debtor relating thereto; (iv) in respect of liabilities incurred in the ordinary  
10 course of business, the date upon which such liabilities are payable in the ordinary course of the  
11 Debtor's business, consistent with past practice; and (v) such other date as may be agreed upon  
12 between the Holder of such Allowed Administrative Claim and the Debtor or Reorganized Ahern, as  
13 the case may be, (a) Cash equal to the unpaid portion of its Allowed Administrative Claim or (b)  
14 such other treatment as to which the Holder of such Allowed Administrative Claim may agree.

### 11 **B. DIP Loan**

12 Except to the extent that Reorganized Ahern and the Holder of a DIP Loan Claim agrees to a  
13 less favorable treatment, in full and final satisfaction, settlement, release, and discharge of each DIP  
14 Loan Claim, each DIP Loan Claim shall be paid in full in Cash by Reorganized Ahern on the  
15 Effective Date.

### 15 **C. Professional Fee Claims**

16 Professionals or other Persons asserting a Professional Fee Claim for services rendered  
17 before the Effective Date must file and serve on the Debtor and such other Persons who are  
18 designated by the Bankruptcy Rules, the Confirmation Order, the Interim Compensation Order or  
19 other Final Order of the Bankruptcy Court an application for final allowance of such Professional  
20 Claim for accrued professional compensation no later than the Administrative Claims Bar Date.  
21 Objections to any Claim for accrued professional compensation must be filed and served on  
22 Reorganized Ahern and the Office of the U.S. Trustee and the requesting party no later than the  
23 Administrative Claims Objection Deadline. The Holder of an Allowed Professional Fee Claim shall  
24 receive in full satisfaction, settlement, release and discharge of and in exchange for its Allowed  
25 Professional Fee Claim Cash equal to the unpaid portion of its Allowed Professional Fee Claim.

26 Upon the Effective Date, any requirement that Professionals comply with sections 327  
27 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services  
28 rendered after such date shall terminate, and Reorganized Ahern may employ and pay any counsel or  
other advisors for services rendered or expenses incurred after the Effective Date in the ordinary  
course of business without any further Final Order or approval of the Bankruptcy Court.

The Proponents' Fees and the Second Lien Agents' Fees shall be paid in full (or reimbursed  
if previously paid by the Proponents, as the case may be) in cash on the Effective Date, without the  
need to obtain further approval of the Bankruptcy Court or to comply with sections 327 through 331  
and 1103 of the Bankruptcy Code or any U.S. Trustee guidelines, as applicable.

## **D. Priority Tax Claims**

Each Holder of an Allowed Priority Tax Claim, if any, will, in full and final satisfaction of such Claim, be paid in full (or be treated in compliance with section 1129(a)(9)(C) of the Bankruptcy Code) by Reorganized Ahern on the latest of: (i) the Effective Date or as soon thereafter as practicable; (ii) such date as may be fixed by the Bankruptcy Court; (iii) the first Business Day following the fourteenth (14th) day after the date on which an order allowing such Claim becomes a Final Order; and (iv) such date as is agreed to by the Holder of such Claim and the Debtor or Reorganized Ahern, as the case may be.

## **ARTICLE III. TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

### **A. Summary Of Classification**

Pursuant to the Noteholder Plan and in accordance with section 1123(a)(1) of the Bankruptcy Code, all Claims of Creditors (except Administrative Claims, Professional Fee Claims and Priority Tax Claims) and Equity Interests are placed in the Classes described below. A Claim is classified in a particular Class only to the extent that the Claim qualifies within the description of that Class and is classified in such other Classes to the extent that any remainder of the Claim qualifies within the definition of such other Classes. A Claim is also classified in a particular Class only to the extent that such Claim is an Allowed Claim in that Class and has not been paid, released or otherwise satisfied prior to the Effective Date. Notwithstanding the foregoing, any Holder of a Claim in the Classes below described as “entitled to vote” to which no objection to the Claim has been filed on or before the commencement of the Confirmation Hearing or such other date as the Bankruptcy Court determines, shall be entitled to vote to accept or reject the Noteholder Plan.

<b>Class</b>	<b>Claim</b>	<b>Treatment</b>	<b>Voting Rights</b>
Class 1	Other Secured Claims	Unimpaired	Deemed to Accept
Class 2	Other Priority Claims	Unimpaired	Deemed to Accept
Class 3	First Lien Term Loan Claims	Unimpaired	Deemed to Accept
Class 4	Second Lien Notes Claims	Impaired	Entitled to Vote
Class 5	Insider Claims	Impaired	Entitled to Vote
Class 6	Personal Injury Claims	Unimpaired	Deemed to Accept
Class 7	General Unsecured Claims	Unimpaired	Deemed to Accept
Class 8	Equity Interests	Impaired	Entitled to Vote

**B. Acceptance By Impaired Class**

Classes 4, 5 and 8 are Impaired under the Noteholder Plan. Any one of the Impaired Classes of Claims shall have accepted the Noteholder Plan if (i) Holders of at least two-thirds (2/3) in amount of Allowed Claims actually voting in such Impaired Class have voted to accept the Noteholder Plan and (ii) Holders of more than one-half (1/2) in number of Allowed Claims actually voting in such Class have voted to accept the Noteholder Plan, in each case not counting the vote of any Insider or any Holder whose vote is designated under section 1126(e) of the Bankruptcy Code. The Impaired Class of Equity Interests shall have accepted the Noteholder Plan if Holders of at least two-thirds (2/3) in amount of the Equity Interests actually voting in such Impaired Class have voted to accept the Noteholder Plan, or any Holder whose vote is designated under section 1126(e) of the Bankruptcy Code.

In the event of a controversy as to whether any Class of Claims or Equity Interests is Impaired under the Noteholder Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy.

**C. Cramdown**

To the extent necessary, the Proponents will request confirmation of the Noteholder Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Proponents reserve the right to modify the Noteholder Plan to the extent, if any, that confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

**D. Treatment Of Claims And Equity Interests**

**1. Class 1: Other Secured Claims**

*Classification:* Class 1 consists of Other Secured Claims against the Debtor.

*Treatment:* Unless the Holder of an Allowed Other Secured Claim agrees to a different treatment, on the Effective Date, or as soon as reasonably practicable, each Holder of an Allowed Other Secured Claim shall (a) have its Allowed Other Secured Claim Reinstated, or (b) receive, in full satisfaction, settlement, release and discharge of and in exchange for, such Allowed Other Secured Claim, either (i) Cash in the full amount of such Allowed Other Secured Claim, including any postpetition interest accrued pursuant to section 506(b) of the Bankruptcy Code, (ii) the proceeds of the sale or disposition of the Collateral securing such Allowed Other Secured Claim to the extent of the value of the Holder's secured interest in such Collateral, (iii) the Collateral securing such Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, or (iv) such other Distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code. The manner and treatment of each Allowed Other Secured Claim shall be determined by the Noteholders and transmitted, in writing, to the Holder of such Other Secured Claim on or prior to the Effective Date. If the Allowed Other Secured Claim of a Holder exceeds the value of the Collateral that secures it, such Holder will have an Allowed Other Secured Claim equal to the Collateral's value and an Allowed General Unsecured Claim for the deficiency.

*Voting:* Allowed Other Secured Claims are Unimpaired, and Holders of Allowed Other Secured Claims are conclusively deemed to have accepted the Noteholder Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Other Secured Claims are not entitled to vote to accept or reject the Noteholder Plan.

## **2. Class 2: Other Priority Claims**

*Classification:* Class 2 consists of the Other Priority Claims against the Debtor.

*Treatment:* Unless the Holder of an Allowed Other Priority Claim agrees to a different treatment, each Holder of an Allowed Other Priority Claim, if any, shall, in full satisfaction, settlement, release and discharge of and in exchange for Allowed Other Priority Claims, be paid in full in Cash by Reorganized Ahern upon the latest of: (a) the Effective Date or as soon thereafter as practicable; (b) such date as may be fixed by the Bankruptcy Court; (c) the first Business Day following the fourteenth (14th) day after such Claim is Allowed; and (d) such date as agreed upon by the Holder of such Claim and the Debtor or Reorganized Ahern.

*Voting:* Allowed Other Priority Claims are Unimpaired, and Holders of Allowed Other Priority Claims are conclusively deemed to have accepted the Noteholder Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Noteholder Plan.

## **3. Class 3: First Lien Term Loan Claims**

*Classification:* Class 3 consists of the First Lien Term Loan Claims against the Debtor.

*Treatment:* The First Lien Term Loan Claims are hereby Allowed Claims, not subject to offset, defense, counterclaim, reduction, or credit of any kind whatsoever. Unless the Holder of an Allowed First Lien Term Loan Claim agrees to a different treatment, each Holder of an Allowed First Lien Term Loan Claim shall, in full satisfaction, settlement, release and discharge of and in exchange for the Allowed First Lien Term Loan Claim, be paid in full in Cash by Reorganized Ahern upon the latest of: (a) the Effective Date or as soon thereafter as practicable; (b) such date as may be fixed by the Bankruptcy Court; and (c) such date as agreed upon by the Holder of such Claim and the Debtor or Reorganized Ahern.

*Voting:* Allowed First Lien Term Loan Claims are Unimpaired, and Holders of Allowed First Lien Term Loan Claims are conclusively deemed to have accepted the Noteholder Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed First Lien Term Loan Claims are not entitled to vote to accept or reject the Noteholder Plan.

## **4. Class 4: Second Lien Notes Claims**

*Classification:* Class 4 consists of the Second Lien Notes Claims against the Debtor.

*Treatment:* The Second Lien Notes Claims are hereby Allowed Claims, not subject to offset, defense, counterclaim, reduction, or credit of any kind whatsoever. Unless the Holder of an Allowed Second Lien Notes Claim agrees to a different treatment, each Holder of an Allowed Second Lien Notes Claim shall, in full satisfaction, settlement, release and discharge of and in exchange for the Allowed Second Lien Notes Claim, receive its Pro Rata

share of each of the New Equity Interests of Reorganized Ahern, subject only to dilution from: (a) the issuance of New Equity Interests in connection with the Backstopped Rights Offering, (b) the exercise of New Warrants of Reorganized Ahern issued to Holders of existing Equity Interests in the Debtor; and (c) New Equity Interests issued in connection with a Management Equity Incentive Plan. Distributions with respect to Allowed Second Lien Notes Claims shall occur upon the later of: (i) the Effective Date or as soon thereafter as practicable; and (ii) such date as may be fixed by the Bankruptcy Court. All such Distributions shall be made to the Second Lien Indenture Trustee unless the Second Lien Indenture Trustee consents to the direct Distribution to Holders of Second Lien Notes Claims through DTC.

*Voting:* Allowed Second Lien Notes Claims are Impaired, and Holders of Allowed Second Lien Notes Claims are entitled to vote to accept or reject the Noteholder Plan.

## **5. Class 5: Insider Claims**

*Classification:* Class 5 consists of the Insider Claims against the Debtor.

*Treatment:* Unless the Holder of an Allowed Insider Claim agrees to a different treatment, each Holder of an Allowed Insider Claim shall, in full satisfaction, settlement, release, and discharge of, and in exchange for the Allowed Insider Claim, be paid in Cash by Reorganized Ahern in semi-annual payments over a period of 2 years with interest accruing on such Allowed Claim at a rate to be determined by the Bankruptcy Court, upon the later of: (a) the resolution of all litigation relating to, or arising out of Insider Causes of Action (pursuant to one or more Final Orders); (b) resolution of any Avoidance Actions against an Insider who is a Holder of an Insider Claim; and (c) such other date as may be fixed by the Bankruptcy Court.

*Voting:* Allowed Insider Claims are Impaired, and Holders of Allowed Insider Claims are entitled to vote to accept or reject the Noteholder Plan.

## **6. Class 6: Personal Injury Claims**

*Classification:* Class 6 consists of the Personal Injury Claims against the Debtor.

*Treatment:* Unless the Holder of a Personal Injury Claim agrees to a different treatment, each Holder of an Allowed Personal Injury Claim shall, in full satisfaction, settlement, release, and discharge of, and in exchange for the Allowed Personal Injury Claim, be paid in full in Cash upon the Effective Date, or as soon as reasonably practicable thereafter, by Reorganized Ahern; provided that no Distributions shall be made on account of Allowed Personal Injury Claims until the insurance coverage with respect to such Allowed Personal Injury Claims has been exhausted.

*Voting:* Allowed Personal Injury Claims are Unimpaired, and Holders of Allowed Personal Injury Claims are conclusively deemed to have accepted the Noteholder Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Personal Injury Claims are not entitled to vote to accept or reject the Noteholder Plan.

**7. Class 7: General Unsecured Claims**

*Classification:* Class 7 consists of the General Unsecured Claims against the Debtor.

*Treatment:* Unless the Holder of a General Unsecured Claim agrees to a different treatment, each Holder of an Allowed General Unsecured Claim shall, in full satisfaction, settlement, release, and discharge of, and in exchange for the Allowed General Unsecured Claim, be paid in full in Cash by Reorganized Ahern upon the Effective Date, or as soon as reasonably practicable thereafter.

*Voting:* Allowed General Unsecured Claims are Unimpaired, and Holders of Allowed General Unsecured Claims are conclusively deemed to have accepted the Noteholder Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed General Unsecured Claims are not entitled to vote to accept or reject the Noteholder Plan.

**8. Class 8: Equity Interests**

*Classification:* Class 8 consists of the Equity Interests in the Debtor.

*Treatment:* Upon the Effective Date, Holders of existing Equity Interests who vote in favor of the Noteholder Plan shall receive their Pro Rata Distribution of the New Warrants. Holders of existing Equity Interests who vote in favor of the Noteholder Plan shall be deemed by casting such vote to have agreed not to compete, directly or indirectly with Reorganized Ahern's business or to solicit, directly or indirectly, any employee of the Debtor or Reorganized Ahern for a period of two years after the Effective Date. Holders of existing Equity Interests who do not vote in favor of the Noteholder Plan shall not receive any distribution and shall not retain any property or Interest in Reorganized Ahern or any of its assets or properties.

Distributions of the New Warrants to Holders of Equity Interests shall be made upon the later of: (a) the resolution of all litigation relating to, or arising out of Insider Causes of Action and Avoidance Actions (pursuant to one or more Final Orders); and (b) such other date as may be fixed by the Bankruptcy Court.

*Voting:* Equity Interests are Impaired, and Holders of existing Equity Interests are entitled to vote to accept or reject the Noteholder Plan.

**E. Allowed Claims**

Notwithstanding any provision herein to the contrary, the Debtor and/or Reorganized Ahern shall only make Distributions to Holders of Allowed Claims. No Holder of a Disputed Claim will receive any Distribution on account thereof unless and until and only to the extent that its Disputed Claim becomes an Allowed Claim. In accordance with section 502(d) of the Bankruptcy Code, no Holder of a Claim will receive any Distribution on account thereof to the extent such Holder is a transferee of a voidable transfer as provided therein.

**F. Postpetition Interest**

In accordance with section 502(b)(2) of the Bankruptcy Code, the amount of all Claims against the Debtor shall be calculated as of the Petition Date. Except as otherwise explicitly provided herein, in a Final Order of the Bankruptcy Court or in a section of the Bankruptcy Code, no Holder of a Claim shall be entitled to or receive postpetition interest.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. Noteholder Plan Funding**

Unless otherwise set forth herein, Cash payments under the Noteholder Plan shall be funded from Cash on hand, borrowings under the Exit Financing Facility and the proceeds of the Backstopped Rights Offering.

**B. Reorganized Ahern**

Upon the Effective Date, Reorganized Ahern shall be converted from a Nevada corporation to a Delaware limited liability company. On or before the Effective Date, the Reorganized Ahern Organizational Documents shall be executed and, to the extent required, the Reorganized Ahern Organizational Documents shall (i) include, pursuant to section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by section 1123(a)(6) of the Bankruptcy Code; and (ii) to the extent necessary or appropriate, include such provisions as may be needed to effectuate and consummate the Noteholder Plan and the transactions contemplated herein. After the Effective Date, Reorganized Ahern shall be responsible for the preparation of all reports, tax returns and other governmental filings required to be filed by the Debtor and Reorganized Ahern and all obligations related thereto.

**C. Additional Reorganized Ahern Provisions**

The Reorganized Ahern Organizational Documents, and resolutions or similar documents related to the formation and governance of Reorganized Ahern under the Noteholder Plan, shall be subject to applicable bankruptcy and/or state law.

**D. New Financing**

On the Effective Date, (a) the Exit Financing Facility, together with new promissory notes and guarantees evidencing the obligations of Reorganized Ahern thereunder, (b) the Backstopped Rights Offering Agreement, and (c) and all other documents, instruments, mortgages, and agreements to be entered into, delivered, or confirmed thereunder on the Effective Date, shall become effective. The obligations incurred by Reorganized Ahern pursuant to the Exit Financing Facility and related documents shall be paid as set forth in the Exit Financing Facility Documents. The obligations incurred by Reorganized Ahern pursuant to the Backstopped Rights Offering shall be paid as set forth in the Backstopped Rights Offering Agreement.

**E. Effective Date Events**

On the Effective Date, or as soon as reasonably practicable thereafter: (i) the DIP Loan Notes, First Lien Term Loans and Second Lien Notes shall be cancelled and extinguished and of no further force or effect except as set forth below; (ii) the Equity Interests of the Debtor shall be cancelled and extinguished and be of no further force or effect; (iii) Reorganized Ahern shall execute and deliver the Exit Financing Facility Documents to the Exit Financing Facility Agents; (iv) Reorganized Ahern or the Distribution Agent shall deliver the New Equity Interests and Rights Offering Interests of Reorganized Ahern in accordance with the provisions of the Noteholder Plan and the Backstopped Rights Offering Agreement; and (v) the DIP Loan Documents, the First Lien Term Loan Documents and the Second Lien Notes Documents shall be of no further effect except as set forth below.

The DIP Loan Documents, the First Lien Term Loan Documents and the Second Lien Notes Documents will continue in effect solely for the purposes of: (i) allowing the DIP Loan Agent, First Lien Term Loan Agents and Second Lien Indenture Trustee, to receive the Distributions required to be made to them or at their direction pursuant to the Noteholder Plan and/or the DIP Loan Documents, the First Lien Term Loan Documents and the Second Lien Notes Documents, and (ii) allowing and preserving the rights of the Second Lien Agents to (a) make Distributions in satisfaction of Allowed Second Lien Notes Claims, (b) exercise any applicable charging liens against any such Distributions, and (c) seek and obtain compensation and reimbursement for any fees, expenses (including attorney's fees) or indemnity to the extent permitted by the Second Lien Notes Documents. From and after the Effective Date, the Second Lien Agents will have no duties or obligations under the Second Lien Notes Documents other than to make Distributions.

**F. Post-Effective Date Officers And Directors Of Reorganized Ahern**

On the Effective Date, the term of each member of the current board of directors of the Debtor shall automatically expire. The New Board of Directors of Reorganized Ahern of Reorganized Ahern shall be disclosed in the Noteholder Plan Supplement. Unless otherwise set forth in the Noteholder Plan Supplement, the current officers and management team of the Debtor shall be entitled to maintain their current positions.

**G. No Corporate Action Required**

As of the Effective Date: (i) the adoption, execution, delivery and implementation or assignment of all contracts, leases, instruments, releases and other agreements related to or contemplated by the Noteholder Plan; and (ii) the other matters provided for under or in furtherance of the Noteholder Plan involving corporate action to be taken by or required of the Debtor, shall be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without further order of the Bankruptcy Court or any requirement of further action by Reorganized Ahern's Board of Directors or officers of the Debtor. In particular, the adoption of the Reorganized Ahern Organizational Documents, the selection of directors and officers of the Debtor or Reorganized Ahern, and all other actions contemplated by or described in the Noteholder Plan with respect thereto, shall be authorized and approved and be binding and in full force and effect in all respects (subject to the provisions of the Noteholder Plan and the Confirmation Order), in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule (other than filing such organizational documents with the applicable

1 governmental unit as required by applicable law) or the vote, consent, authorization, or approval of  
 2 any Person. Notwithstanding the forgoing, Reorganized Ahern shall take all action required to  
 3 effectuate the Exit Financing Facility Documents and any other action required to implement the  
 4 Noteholder Plan.

#### 5 **H. Effectuation Of Transactions**

6 On the Effective Date, the appropriate officers of the Debtor and Reorganized Ahern, as  
 7 applicable, and members of the applicable Board of Directors are authorized to issue, execute, and  
 8 deliver the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates,  
 9 resolutions, and instruments contemplated by or described in the Noteholder Plan in the name of and  
 10 on behalf of the Debtor and Reorganized Ahern, and to otherwise fully consummate the transactions  
 11 contemplated by the Noteholder Plan, in each case without further notice to or Final Order of the  
 12 Bankruptcy Court, act or action under applicable law, regulation, Final Order, or rule or any  
 13 requirement of further action, vote, or other approval or authorization by any Person.

#### 14 **I. Filing Of Noteholder Plan And Confirmation Order**

15 To the extent required by applicable law, on the Effective Date a certified copy of the  
 16 Noteholder Plan and the Confirmation Order shall be filed. The Debtor, from the Confirmation Date  
 17 until the Effective Date, is authorized and directed to take any action or carry out any proceeding  
 18 necessary, if any, to effectuate the Noteholder Plan pursuant to applicable law.

#### 19 **J. Vesting Of Assets In Reorganized Ahern**

20 Except as otherwise provided in the Noteholder Plan or any agreement, instrument, or other  
 21 document incorporated therein, on the Effective Date, all property in the Debtor's estate, including  
 22 all Causes of Action, and any property acquired by the Debtor pursuant to the Noteholder Plan shall  
 23 vest in Reorganized Ahern free and clear of all Liens, Claims, charges, or other encumbrances  
 24 (except for Liens, if any, granted to secure the repayment of the Exit Financing Facility, and any  
 25 Liens relating to Secured Claims that are Reinstated ). On and after the Effective Date, Reorganized  
 26 Ahern may operate its business and may use, acquire, or dispose of property and compromise or  
 27 settle any Retained Causes of Action or interests without supervision or approval by the Bankruptcy  
 28 Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

### 21 **ARTICLE V.**

#### 22 **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

##### 23 **A. Assumption And Rejection Of Executory Contracts And Unexpired Leases**

24 Any Executory Contract or Unexpired Lease that: (i) has not expired by its own terms on or  
 25 prior to the Effective Date; (ii) has not been assumed or rejected by the Debtor during the pendency  
 26 of the Chapter 11 Case; (iii) is not listed in the Noteholder Plan Supplement as Executory Contracts  
 27 or Unexpired Leases to be rejected (which may be modified and amended up to the date the  
 28 Bankruptcy Court enters the Confirmation Order); and (iv) is not the subject of a pending motion to  
 reject such Executory Contract or Unexpired Lease, shall be deemed assumed by the Debtor as of  
 immediately prior to the Effective Date, and the entry of the Confirmation Order by the Bankruptcy  
 Court shall constitute approval of any such assumption pursuant to section 365(a) and 1123 of the  
 Bankruptcy Code. Any Executory Contract or Unexpired Lease listed in the Noteholder Plan

1 Supplement as an Executory Contract or Unexpired Lease to be rejected by the Debtor shall be  
 2 deemed rejected by the Debtor as of immediately prior to the Effective Date, and the entry of the  
 3 Confirmation Order by the Bankruptcy Court shall constitute approval of any such rejection pursuant  
 to sections 365(a) and 1123 of the Bankruptcy Code.

4 Upon the Effective Date, each counterparty to an assumed Executory Contract or Unexpired  
 5 Lease listed shall be deemed to have consented to assumption contemplated by section 365(c)(1)(B)  
 6 of the Bankruptcy Code, to the extent such consent is necessary for such assumption. To the extent  
 7 applicable, all Executory Contracts or Unexpired Leases of Reorganized Ahern assumed pursuant to  
 8 this Article V shall be deemed modified such that the transactions contemplated by the Noteholder  
 9 Plan shall not be a “change of control,” however such term may be defined in the relevant Executory  
 10 Contract or Unexpired Lease and any required consent under any such Executory Contract or  
 11 Unexpired Lease shall be deemed satisfied by entry of the Confirmation Order. Also, to the extent  
 applicable, all Executory Contracts or Unexpired Leases of the Debtor assumed pursuant to this  
 Article V shall be assigned to Reorganized Ahern on the Effective Date, and such assignment shall  
 not be a “change of control,” however such term may be defined in the relevant Executory Contract  
 or Unexpired Lease, and any required consent under any such Executory Contract or Unexpired  
 Lease shall be deemed satisfied by entry of the Confirmation Order.

12 Unless otherwise specified on the Noteholder Plan Supplement, each executory contract and  
 13 unexpired lease listed or to be listed on the Noteholder Plan Supplement shall include modifications,  
 14 amendments, supplements, restatements, or other agreements made directly or indirectly by any  
 15 agreement, instrument, or other document that in any manner affects such executory contract or  
 unexpired lease, without regard to whether such agreement, instrument, or other document is listed  
 on the Noteholder Plan Supplement.

16 Notwithstanding anything contained in the Noteholder Plan to the contrary, unless subject to  
 17 a motion for approval or rejection that has been filed and served prior to the Confirmation Date, all  
 18 of the Debtor’s insurance policies and any agreements, documents or instruments relating thereto,  
 19 shall be treated as executory contracts under the Noteholder Plan and shall be assumed pursuant to  
 the Noteholder Plan, effective as of the Effective Date. Nothing contained in this paragraph shall  
 constitute or be deemed a waiver of any Cause of Action that the Debtor may hold against any  
 Entity, including, without limitation, the insurer, under any of the Debtor’s insurance policies.

## 20 **B. Cure Of Defaults**

21 The Debtor or Reorganized Ahern shall Cure any defaults respecting each Executory  
 22 Contract or Unexpired Lease assumed pursuant to this Article V upon the latest of (i) the Effective  
 23 Date or as soon thereafter as practicable; (ii) such date as may be fixed by the Bankruptcy Court or  
 24 agreed upon by the Debtor, and after the Effective Date, Reorganized Ahern; and (iii) the first  
 25 Business Day following the fourteenth (14th) day after the entry of a Final Order resolving any  
 26 dispute regarding (a) a Cure amount, (b) the ability of the Debtor or Reorganized Ahern to provide  
 27 adequate assurance of future performance under the Executory Contract or Unexpired Lease  
 28 assumed pursuant to the Noteholder Plan in accordance with section 365(b)(1) of the Bankruptcy  
 Code, or (c) any other disputed matter pertaining to assumption, assignment or the Cure of a  
 particular Executory Contract or an Unexpired Lease; provided, however, that upon resolution of a  
 dispute over a Cure amount, Reorganized Ahern may reject the Executory Contract or Unexpired  
 Lease notwithstanding a previous listing as assumed. The proposed Cure amounts, if any, that will

be paid as provided by above will be listed in the Noteholder Plan Supplement (which may be supplemented and amended up to and including the commencement of the Confirmation Hearing).

### **C. Objection To Cure Amounts**

Any party to an Executory Contract or Unexpired Lease who objects to the Cure amounts listed in the Noteholder Plan Supplement must file and serve an objection on the Debtor's counsel no later than the deadline set by the Bankruptcy Court for filing Noteholder Plan objections. Failure to file and serve a timely objection shall be deemed consent to the Cure amounts listed in the Noteholder Plan Supplement. Any Cure Amounts shall be the responsibility of Reorganized Ahern. If there is a dispute regarding: (i) the amount of any Cure payment; (ii) the ability of Reorganized Ahern to provide "adequate assurance of future performance" under the Executory Contract or Unexpired Lease to be assumed or assigned; or (iii) any other matter pertaining to assumption, the Cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of an order resolving the dispute and approving the assumption.

### **D. Confirmation Order**

The Confirmation Order will constitute an order of the Bankruptcy Court approving the assumptions described in this Article V, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. Notwithstanding the foregoing, if, as of the date the Bankruptcy Court enters the Confirmation Order, there is pending before the Bankruptcy Court a dispute concerning the Cure amount or adequate assurance for any particular Executory Contract or Unexpired Lease (or if the time period for a non-Debtor to object to the Cure has not yet lapsed), the assumption of such Executory Contract or Unexpired Lease shall be effective as of the date the Bankruptcy Court enters an order resolving any such dispute and authorizing assumption by the Debtor.

### **E. Rejection Claims Bar Date**

All proofs of Claims with respect to Claims arising from the rejection of any Executory Contract or Unexpired Lease shall be filed on or before the Rejection Claims Bar Date. Any Claim not filed within such time shall be forever barred.

## **ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS**

### **A. Distributions**

Except as otherwise explicitly provided for in the Noteholder Plan, the Disbursing Agent shall be responsible for making Distributions described in the Noteholder Plan. Except as otherwise provided in the Noteholder Plan or the Confirmation Order, all Cash necessary for Reorganized Ahern to make payments pursuant to the Noteholder Plan shall be obtained from a combination of: (i) existing Cash balances and the operations of the Debtor and Reorganized Ahern, (ii) Cash from the Exit Financing Facility; and (iii) Cash from the Backstopped Rights Offering.

### **B. Timing And Calculation Of Amounts To Be Distributed**

Except as otherwise provided in the Noteholder Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the

1 date that such a Claim becomes an Allowed Claim, on the next Distribution Date or as soon as  
 2 reasonably practicable thereafter), each Holder of an Allowed Claim against the Debtor shall receive  
 3 the full amount of the Distributions that the Noteholder Plan provides for Allowed Claims in the  
 4 applicable Class and in the manner provided herein. All Distributions provided for in the Noteholder  
 5 Plan shall be made only to the extent permitted by applicable law. In the event that any payment or  
 6 act under the Noteholder Plan is required to be made or performed on a date that is not a Business  
 7 Day, then the making of such payment or the performance of such act may be completed on the next  
 8 succeeding Business Day, but shall be deemed to have been completed as of the required date. If  
 and to the extent that there are Disputed Claims, Distributions on account of any such Disputed  
 Claims shall be made pursuant to the provisions set forth in Article VII hereof. Except as otherwise  
 provided herein, Holders of Claims shall not be entitled to interest, dividends or accruals on the  
 Distributions provided for herein, regardless of whether such Distributions are delivered on or at any  
 time after the Effective Date.

### 9 **C. Rights And Powers Of Disbursing Agent**

10 The Disbursing Agent shall be empowered to: (i) affect all actions and execute all  
 11 agreements, instruments and other documents necessary to perform its duties under the Noteholder  
 12 Plan; (ii) make all Distributions contemplated hereby; (iii) employ Professionals to represent it with  
 13 respect to its responsibilities; and (iv) exercise such other powers as may be vested in the Disbursing  
 14 Agent by an order of the Bankruptcy Court, pursuant to the Noteholder Plan, or as deemed by the  
 15 Disbursing Agent to be necessary and proper to implement the provisions hereof. The Disbursing  
 16 Agent shall be deemed to hold all property to be distributed hereunder in trust for the Persons  
 17 entitled to receive the same. The Disbursing Agent shall not hold an economic or beneficial interest  
 18 in such property. Except as otherwise ordered by the Bankruptcy Court, the amount of any  
 19 reasonable fees and expenses incurred by the Disbursing Agent from and after the Effective Date,  
 including, without limitation, reasonable fees and expenses of counsel, shall be paid in Cash by  
 Reorganized Ahern without further order of the Bankruptcy Court within twenty (20) days of receipt  
 of an invoice by Reorganized Ahern. In the event that Reorganized Ahern objects to the payment of  
 such invoice for post-Effective Date fees and expenses, in whole or in part, and the parties cannot  
 resolve such objection after good faith negotiation, the Bankruptcy Court shall retain jurisdiction to  
 make a determination as to the extent to which the invoice shall be paid by Reorganized Ahern.

20 With respect to a Holder of a Claim whose Distribution is governed by an agent or other  
 21 agreement which is administered by an indenture trustee, agent or servicer, such Distributions shall  
 22 be deposited with the appropriate agent or servicer, who shall then deliver such Distributions to  
 23 Holders of Claims in accordance with the provisions of the Noteholder Plan and the terms of the  
 24 relevant indenture or other governing agreement; provided, however, that Distributions to the  
 Disbursing Agent (other than the Debtor or Reorganized Ahern) under the Noteholder Plan will be  
 deemed payment in full, regardless of whether such agent (other than the Debtor or Reorganized  
 Ahern) ultimately distributes such Distribution to the appropriate Claim or Equity Interest Holder.

25 From and after the Effective Date, the Disbursing Agent shall be exculpated by all Persons  
 26 and Entities, including, without limitation, Holders of Claims and Equity Interests and other parties  
 27 in interest, from any and all Claims, Causes of Action, and other assertions of liability arising out of  
 28 the discharge of the powers and duties conferred upon such Disbursing Agent by the Noteholder  
 Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Noteholder  
 Plan, or applicable law, except for actions or omissions to act arising out of the gross negligence or

1 willful misconduct of such Disbursing Agent. No Holder of a Claim or an Equity Interest or other  
2 party in interest shall have or pursue any Claim or Cause of Action against the Disbursing Agent for  
3 making payments in accordance with the Noteholder Plan or for implementing the provisions of the  
4 Noteholder Plan.

#### 5 **D. Providing For Claims Payments**

6 Distributions to Holders of Allowed Claims shall be made by the Disbursing Agent: (i) at the  
7 addresses set forth on the proofs of Claim filed by such Holders (or at the last known addresses of  
8 such Holders if no proof of Claim is filed or if the Debtor has not been notified of a change of  
9 address); (ii) at the addresses set forth in any written notices of address changes delivered to the  
10 Disbursing Agent after the date of any related proof of Claim; or (iii) at the addresses reflected in the  
11 Schedules if no proof of Claim has been filed and the Disbursing Agent has not received a written  
12 notice of a change of address. If the Second Lien Indenture Trustee consents to direct Distributions  
13 to Holders of Second Lien Notes Claims, such Distributions shall be made through the facilities of  
14 DTC. If any Holder's Distribution is returned as undeliverable, no further Distributions to such  
15 Holder shall be made unless and until the Disbursing Agent is notified of such Holder's then-current  
16 address, at which time all returned Distributions shall be made to such Holder without interest.  
17 Amounts in respect of undeliverable Distributions made through the Disbursing Agent shall be  
18 returned to Reorganized Ahern until such Distributions are claimed. All claims for undeliverable  
19 Distributions shall be made on or before the second (2nd) anniversary of the Effective Date. After  
20 such date, all unclaimed property shall revert to Reorganized Ahern and the Claim of any Holder or  
21 successor to such Holder with respect to such property shall be discharged and forever barred  
22 notwithstanding any federal or state escheat laws to the contrary. Nothing contained in the  
23 Noteholder Plan shall require Reorganized Ahern or the Disbursing Agent to attempt to locate any  
24 Holder of an Allowed Claim.

#### 25 **E. Means Of Cash Payments**

26 Payments of Cash made pursuant to the Noteholder Plan shall be in U.S. dollars and shall be  
27 made, at the option and in the discretion of the Debtor or the Disbursing Agent, as the case may be,  
28 by (i) checks drawn on, or (ii) wire transfer from, a domestic bank selected by the Debtor or the  
Disbursing Agent, as the case may be. Cash payments to foreign Creditors may be made, at the  
option of the Debtor or the Disbursing Agent, in such funds and by such means as are necessary or  
customary in the applicable foreign jurisdiction.

#### 29 **F. Time Bar To Cash Payments**

30 Checks issued by the Disbursing Agent on account of Allowed Claims shall be null and void  
31 if not negotiated within 180 days from and after the date of issuance thereof. Requests for re-  
32 issuance of any check shall be made directly to the Disbursing Agent by the Holder of the Allowed  
33 Claim with respect to which such check originally was issued. Any claim in respect of such a  
34 voided check shall be made on or before the later of (a) the fifth (5th) anniversary of the Effective  
35 Date or (b) 180 days after the date of issuance of such check, if such check represents a final  
36 Distribution hereunder on account of such Claim. After such date, all Claims in respect of voided  
37 checks shall be discharged and forever barred and Reorganized Ahern shall retain all monies related  
38 thereto.

**G. Application Of Record Date**

At the close of business on the Record Date, the claims registers for all Claims shall be closed, and there shall be no further changes in the record Holders of Claims. Except as provided herein, the Debtor, Reorganized Ahern, the Disbursing Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize any transfer of Claims occurring after the Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record Holders stated on the Claims registers as of the close of business on the Distribution Date irrespective of the number of Distributions to be made under the Noteholder Plan to such Persons or the date of such Distributions.

**H. Claims Paid By Third Parties**

The Debtor, or the Disbursing Agent, as applicable, shall reduce in part or in full a Claim to the extent that the Holder of such Claim receives payment in part or in full on account of such Claim from a party that is not the Debtor or the Disbursing Agent. To the extent a Holder of a Claim receives a Distribution on account of such Claim receives payment from a party that is not the Debtor or the Disbursing Agent on account of such Claim, such Holder shall, within two weeks of receipt thereof, repay or return the Distribution to Reorganized Ahern, to the extent the Holder's total recovery on account of such Claim from the third party and under the Noteholder Plan exceeds the amount of such Claim as of the date of any such Distribution under the Noteholder Plan.

**I. Insurance Claims**

No Distributions under the Noteholder Plan shall be made on account of Allowed Claims covered by the Debtor's Insurance Policies, including but not limited to Allowed Personal Injury Claims, until the insurance coverage with respect to such Allowed Claims has been exhausted. To the extent that the Debtor's insurers agree to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurer's agreement, such Claim may be expunged without a Claims objection having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court.

**J. Applicability Of Insurance Policies**

Except as otherwise provided in the Noteholder Plan, Distributions to Holders of Allowed Claims, including but not limited to Allowed Personal Injury Claims, shall be made in accordance with the provisions of any applicable Insurance Policy. Nothing contained in the Noteholder Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor or any Person may hold against any other Person, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**K. Allocation Of Noteholder Plan Distributions Between Principal And Interest**

To the extent that any Allowed Claim entitled to a Distribution under the Noteholder Plan is comprised of principal and accrued but unpaid interest thereon, such Distribution shall, for the Debtor's U.S. federal income tax purposes, be allocated on the Debtor's books and records to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

**L. Setoffs**

Except as provided in the Noteholder Plan, the Debtor or Reorganized Ahern may, but shall not be required to, set off or offset against any Claim, and the payments or other Distributions to be made pursuant to the Noteholder Plan in respect of such Claim, Claims of any nature whatsoever that the Debtor may have against the Claim's Holder; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or Reorganized Ahern of any claim that the Debtor may have against such Holder. Nothing herein shall be deemed to expand rights to setoff under applicable law. Unless otherwise provided in an order of the Bankruptcy Court, nothing contained in the Noteholder Plan is intended to limit the ability of any Creditor to effectuate rights of setoff or recoupment preserved or permitted by the provisions of sections 553, 555, 556, 559, 560, or 561 of the Bankruptcy Code or pursuant to the common law right of recoupment.

**M. Fractional Distributions**

Notwithstanding any other provision of the Noteholder Plan to the contrary, no fractional New Equity Interests or New Warrants to purchase fractional amount of New Equity Interests will be made pursuant to the Noteholder Plan. Whenever any Distribution would otherwise call for Distribution of a fraction of New Equity Interest or a New Warrant to purchase a fraction amount of New Equity Interests, such number of New Equity Interests or New Warrants to be distributed shall be rounded down to the nearest whole number.

**N. Prepayment**

Except as otherwise provided in the Noteholder Plan, any ancillary documents entered into in connection with the Noteholder Plan, or the Confirmation Order, Reorganized Ahern will have the right to prepay, without penalty, all or any portion of an Allowed Claim entitled to payment in Cash at any time following the Effective Date; provided, however, that any such prepayment will not be violative of, or otherwise prejudice, the relative priorities and parities among the Classes of Claims.

**O. No Distribution In Excess Of Allowed Amounts**

Notwithstanding anything to the contrary set forth in the Noteholder Plan, no Holder of an Allowed Claim will receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim (excluding payments on account of interest due and payable from and after the Effective Date pursuant to the Noteholder Plan, if any).

**P. Joint Distributions**

The Debtor or the Disbursing Agent may, in their sole discretion, make Distributions jointly to any Holder of a Claim and any other entity who has asserted, or whom the Debtor has determined to have, an interest in such Claim. Except as otherwise provided in the Noteholder Plan or in the Confirmation Order, and notwithstanding the joint nature of any Distribution, all Distributions made by the Debtor or the Disbursing Agent will be in exchange for and in complete satisfaction, settlement, discharge, and release of, all Claims of any nature whatsoever against the Debtor and Reorganized Ahern or any of its assets or properties as set forth in Article III hereof.

### Q. Statements

The Debtor and the Disbursing Agent shall maintain a record of the names and addresses of all Holders of Allowed General Unsecured Claims as of the Effective Date for purposes of mailing Distributions to them. The Debtor and the Disbursing Agent may rely on the name and address set forth in the Schedules and/or proofs of Claim as of the Record Date as being true and correct unless and until notified in writing. The Debtor and Reorganized Ahern shall file all tax returns and other filings with governmental authorities on behalf of the Debtor and Reorganized Ahern and the Assets it holds.

## R. Further Authorization

Reorganized Ahern shall be entitled to seek such orders, judgments, injunctions, and rulings as it deems necessary to carry out the intentions and purposes, and to give full effect to the provisions of the Noteholder Plan.

**ARTICLE VII.**  
**RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS**

## A. Resolution Of Disputed Claims

Holders of Claims must file proofs of Claims on or prior to the applicable Bar Date. No later than the Claims Objection Deadline (unless extended by an order of the Bankruptcy Court), the Debtor or Reorganized Ahern, as the case may be, shall file objections to Claims that were required to be filed by the applicable Bar Date with the Bankruptcy Court and serve such objections upon Holders of such Claims to which objections are made. Nothing contained herein, however, shall limit Reorganized Ahern's right to object to Claims, if any, filed or amended after the Claims Objection Deadline.

Holders of Administrative Claims must file a request for payment on or prior to the Administrative Claims Bar Date. No later than the Administrative Claims Objection Deadline (unless extended by an order of the Bankruptcy Court), the Debtor or Reorganized Ahern, as the case may be, shall file objections to the Administrative Claims with the Bankruptcy Court and serve such objection upon Holders of such Administrative Claims to which objections are made. Nothing contained herein, however, shall limit Reorganized Ahern's right to object to Administrative Claims, if any, filed or amended after the Administrative Claims Objection Deadline.

### B. No Distribution Pending Allowance

No payments or Distributions, if any contemplated by the Noteholder Plan, will be made with respect to all or any portion of a Disputed Claim or Equity Interest unless and until all objections to such Disputed Claims or Equity Interests have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim or Allowed Equity Interest.

**C. Resolution Of Objections After Effective Date**

From and after the Effective Date, Reorganized Ahern may propose settlements of, or withdraw objections to, all pending or filed Disputed Claims and may settle or compromise any Disputed Claim without notice and a hearing and without approval of the Bankruptcy Court.

**D. Distributions After Allowance**

From and after the Effective Date, the Disbursing Agent will make Distributions quarterly (i) on account of any Disputed Claim that has become an Allowed Claim during the preceding calendar quarter, and (ii) on account of previously Allowed Claims that would have been distributed to Holders of such Claims on the dates Distributions previously were made to Holders of Allowed Claims in such Class had the Disputed Claims that have become Allowed Claims been Allowed on such dates. Such Distributions will be made pursuant to the applicable provisions of Article VI hereof.

**E. Disputed Claims Reserve**

From and after the Effective Date, and until such time as all Disputed Claims have been compromised and settled or determined by Final Order, the Disbursing Agent shall reserve and hold in escrow for the benefit of each Holder of a Disputed Claim and any dividends, gains, or income attributable thereto, in an amount equal to Distributions which would have been made to the Holder of such Disputed Claim if it were an Allowed Claim in an amount equal to the lesser of (i) the amount of the Disputed Claim, (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum amount in which such Claim ultimately may become an Allowed Claim, or (iii) such other amount as may be agreed upon by the Holder of such Disputed Claim and Reorganized Ahern. Any amount reserved and held for the benefit of a Holder of a Disputed Claim shall be treated as a payment and reduction on account of such Disputed Claim for purposes of computing any additional amounts to be paid in the event the Disputed Claim ultimately becomes an Allowed Claim. In the event that a Disputed Claim is not Allowed, in whole or in part, Holders of Allowed Claims in the same Class as the Holder of the Claim that is not Allowed shall receive their Pro Rata share of any amount reserved on account of the Claim that is not Allowed. Such Cash reserved for the benefit of Holders of Disputed Claims shall be either (x) held by the Disbursing Agent in an interest-bearing account or (y) invested in interest-bearing obligations issued by the United States Government and guaranteed by the United States Government, and having (in either case) a maturity of not more than thirty (30) days, for the benefit of such Holders pending determination of their entitlement thereto under the terms of the Noteholder Plan. No payments or Distributions shall be made with respect to all or any portion of any Disputed Claim pending the entire resolution thereof by Final Order.

**F. Estimation Of Claims**

The Debtor (before the Effective Date) or Reorganized Ahern (on or after the Effective Date) may, at any time, and from time to time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether an objection was previously filed with the Bankruptcy Court with respect to such Claim, or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate

any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any Disputed Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim against any party or Person, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor (before the Effective Date) or Reorganized Ahern (after the Effective Date), may elect to pursue any supplemental proceedings to object to any ultimate Distribution on such Claim. All of the objection, estimation, settlement and resolution procedures set forth in the Noteholder Plan are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, objected to, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

#### **G. Deadline To File Objections To Claims**

The Debtor reserves its right to file objections to Claims, if any, on or before the applicable Claim Objection Deadline.

#### **H. Late-Filed Claims**

Except with respect to Claims, proof of which is made in compliance with the requirements of sections 502(e) and 509 of the Bankruptcy Code, no Claim filed after the Bar Date or, as applicable, the Administrative Claims Bar Date, shall be allowed, and all such Claims are hereby disallowed in full. After the Bar Date or the Administrative Claim Bar Date, as applicable, no Creditor shall be permitted to amend any claim to increase the claimed amount, unless permitted by the Bankruptcy Court, subject to the Debtor's or Reorganized Ahern's right to object to such increase; and any such amendment shall be disallowed, unless permitted by the Bankruptcy Court, subject to the Debtor's or Reorganized Ahern's right to object to such increase, to the extent of the late-filed increase in the claimed amount.

#### **I. Reservation Of Right To Object To Allowance Or Asserted Priority Of Claims**

Nothing herein will waive, prejudice or otherwise affect the rights of the Debtor, Reorganized Ahern or Holders of any Claims to object at any time, including after the Effective Date, to the allowance or asserted priority of any Claim, except with respect to any Allowed Claim.

### **ARTICLE VIII. CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE**

#### **A. Conditions Precedent To Confirmation**

The Confirmation of the Noteholder Plan shall be conditioned upon, and shall not occur, unless and until each of the following conditions have been satisfied or waived pursuant to the terms of this Article VIII:

- i. The Bankruptcy Court shall have entered an order, in form and in substance acceptable to the Proponents, approving the Noteholder Disclosure Statement with respect to the Noteholder Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code;

1           ii.     The Noteholder Plan and all schedules, documents, supplements and exhibits relating  
2                   to the Noteholder Plan, including, but not limited to, any Noteholder Plan  
3                   Supplement, shall have been filed in form and in substance acceptable to the  
4                   Proponents; and

5           iii.    The proposed Confirmation Order shall be in form and substance acceptable to the  
6                   Proponents.

7           **B.     Conditions Precedent To The Effective Date**

8           The Effective Date shall be conditioned upon, and shall not occur, and the Noteholder Plan  
9           shall not be consummated unless and until each of the following conditions have been satisfied or  
10          waived pursuant to the terms of this Article VIII:

11          i.     The Confirmation Order, in form and substance acceptable to the Proponents, shall  
12                have been entered by the Bankruptcy Court and shall have become a Final Order;

13          ii.    The Exit Financing Facility shall have been executed and delivered by all of the  
14                Persons that are parties thereto, in a form and substance acceptable to the Proponents,  
15                and all conditions precedent to the consummation thereof shall have been waived, or  
16                satisfied in accordance with the terms thereof, and funding pursuant to the Exit  
17                Financing Facility shall have occurred;

18          iii.   The Backstopped Rights Offering shall have been consummated and funded by the  
19                Investors.

20          iv.    All documents necessary to implement the transactions contemplated by the  
21                Noteholder Plan shall be in form and substance acceptable to the Proponents and  
22                approved by the Bankruptcy Court;

23          v.     All actions documents, certificates, and agreements necessary to implement the  
24                Noteholder Plan shall have been effected or executed and delivered to the required  
25                parties and, to the extent required, filed with the applicable governmental units in  
26                accordance with applicable laws;

27          vi.    The Bankruptcy Court shall have entered one or more orders (which may include the  
28                Confirmation Order) authorizing the assumption and rejection of Executory Contracts  
29                and Unexpired Leases by the Debtor as contemplated herein in form and substance  
30                acceptable to the Proponents;

31          vii.   Sufficient Cash and other Assets shall be set aside, reserved and withheld by the  
32                Debtor to make the Distributions required to be paid on the Effective Date or within  
33                sixty (60) days thereafter by the Bankruptcy Code and the Noteholder Plan;

34          viii.  All authorizations, consents, regulatory approvals, rulings, letters, no-action letters,  
35                opinions, or documents that are necessary to implement the Noteholder Plan and that  
36                are required by law, regulation, or order have been received; and

- ix. The New Equity Interests shall have been authorized in the amounts set forth in the Noteholder Plan and on terms reasonably satisfactory to the Proponents.

**C. Failure Of Conditions Precedent**

In the event that one or more of the conditions specified in Article VIII(B) hereof have not occurred or been waived as permitted by Article VIII(E) hereof on or before March 1, 2014 or such other date agreed to by the Proponents (i) the Confirmation Order shall be vacated, (ii) no Distributions under the Noteholder Plan shall be made, (iii) the Debtor and all Holders of Claims and Equity Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred, and (iv) the Debtor's obligations with respect to Claims and Equity Interests shall remain unchanged and nothing contained herein shall constitute or be deemed to be a waiver or release of any Claims or Equity Interests by or against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any person in any further proceedings involving the Debtor. For the avoidance of doubt, and notwithstanding anything in the Noteholder Disclosure Statement or the Noteholder Plan to the contrary, if the Noteholder Plan is not confirmed or does not become effective, nothing in the Noteholder Plan or the Noteholder Disclosure Statement shall be construed as a waiver of any rights or Claims of the Noteholders.

**D. Notice Of Effectiveness**

When all of the steps contemplated by Article VIII(B) hereof have been completed, the Debtor shall file with the Bankruptcy Court and serve upon all Creditors and all potential Holders of Administrative Claims known to the Debtor (whether or not disputed), a Notice of Effective Date of Noteholder Plan. The Notice of Effective Date of Noteholder Plan shall include notice of the Administrative Claims Bar Date.

**E. Waiver Of Conditions Precedent**

The Proponents and, if applicable, Reorganized Ahern shall have the right to waive any of the conditions precedent set forth in this Article VIII at any time without leave of or notice to the Bankruptcy Court and without any formal action other than proceeding with consummation of the Noteholder Plan.

**ARTICLE IX.  
TRANSFER OF ASSETS, DISCHARGE, RELEASES, INJUNCTION AND SETTLEMENT**

**A. Vesting And Transfer Of Assets And Assumption Of Liabilities**

Subject to and as provided for in the Noteholder Plan, the Assets shall be vested and/or transferred to Reorganized Ahern on the Effective Date, free and clear of all Claims, Liens, encumbrances, and other interests, except as provided herein, and Reorganized Ahern shall assume all obligations required under the Noteholder Plan, which obligations shall be performed by Reorganized Ahern.

1           **B. Discharge Of Claims**

2           Except as provided in the Noteholder Plan or in the Confirmation Order, the rights afforded  
3           under the Noteholder Plan and the treatment of Claims under the Noteholder Plan will be in  
4           exchange for and in complete satisfaction, discharge and release of all Claims against the Debtor  
5           arising on or before the Effective Date, including any interest accrued on Claims from the Petition  
6           Date. In accordance with the foregoing, except as provided in the Noteholder Plan or the  
7           Confirmation Order, the Confirmation Order will be a judicial determination, as of the Effective  
8           Date, of a discharge of all Claims and other Case debts and liabilities against the Debtor, pursuant to  
9           sections 524 and 1141 of the Bankruptcy Code, and such discharge will void any judgment obtained  
10          against the Debtor at any time, to the extent that such judgment relates to a discharged Claim.

11           **C. Claims Enjoined**

12          Except as provided in the Noteholder Plan or the Confirmation Order or agreed to by the  
13          Proponents or Reorganized Ahern, as of the Effective Date all entities that have held, currently hold  
14          or may hold a Claim or other debt or liability that is discharged pursuant to the terms of the  
15          Noteholder Plan will be permanently enjoined from taking any enforcement actions on account of  
16          any such discharged Claim, debt or other liability, including, but not limited to, (i) commencing or  
17          continuing in any manner any action or other proceeding, (ii) enforcing, attaching, collecting or  
18          recovering in any manner any judgment, award, decree or order, (iii) creating, perfecting or  
19          enforcing any Lien or encumbrance, (iv) asserting a setoff, right of subrogation or recoupment of  
20          any kind against any debt, liability or obligation due to the Debtor or Reorganized Ahern, and (v)  
21          commencing or continuing any action, in any manner, in any place that does not comply with or is  
22          inconsistent with the terms of the Noteholder Plan.

23           **D. Compromise And Settlement**

24          The allowance, classification, and treatment of all Allowed Claims and their respective  
25          Distributions under the Noteholder Plan take into account and/or conform to the relative priority and  
26          rights of the Claims in each Class in connection with any contractual, legal, and equitable  
27          subordination rights relating thereto whether arising under general principles of equitable  
28          subordination, section 510(c) of the Bankruptcy Code. As of the Effective Date, any and all such  
rights described in the preceding sentence will be settled, compromised, and released pursuant to the  
Noteholder Plan and any and all such Causes of Action related thereto are settled, compromised, and  
released pursuant hereto.

29           **E. Releases**

30          As of the Effective Date, to the fullest extent permitted under applicable law, each of the  
31          Released Parties shall be, and shall be deemed to be, released from all Causes of Action owned,  
32          held, or which could have been, or may be asserted by, any other Released Party whether prior to or  
33          subsequent to the Petition Date but in all cases not subsequent to the Effective Date arising from or  
34          related to the Debtor, its Assets, businesses, property or Estate, the Chapter 11 Case, the Noteholder  
35          Disclosure Statement, the Noteholder Plan or the solicitation of votes on the Noteholder Plan;  
36          provided, however, that nothing herein will in any way limit or modify any and all debts or  
37          obligations of the Released Parties or the Substantial Consummation obligations of the Released  
38          Parties, as required under the Noteholder Plan, all agreements entered into in connection with the

1 Noteholder Plan, or any Final Order of the Bankruptcy Court. As of the Effective Date, for good  
 2 and valuable consideration, each Holder of a Claim or Equity Interest shall, and shall be deemed to,  
 3 release the Released Parties (other than the Proponents) from any and all Causes of Action, whether  
 4 arising prior to or subsequent to the Petition Date but in all cases not subsequent to the Effective  
 5 Date arising from or related to the Debtor, its Assets, businesses, property or Estate the Chapter 11  
 6 Case, the Noteholder Disclosure Statement, the Noteholder Plan or the solicitation of votes on the  
 7 Noteholder Plan; provided, however, that these releases will have no effect on the liability of any  
 8 Released Party arising out of gross negligence or willful misconduct; and provided further that  
 9 nothing herein will in any way limit or modify any and all debts or obligations owed pursuant to the  
 10 Noteholder Plan, or any Final Order of the Bankruptcy Court.

#### 7 **F. Exculpation**

8 The Released Parties shall incur no liability to any Holder of a Claim or Equity Interest for  
 9 any act, event, or omission in connection with, or arising out of, the Chapter 11 Case, the  
 10 confirmation of the Noteholder Plan, the solicitation in connection with the Noteholder Plan, the  
 11 consummation of the Noteholder Plan or the administration of the Noteholder Plan or the property to  
 12 be distributed under the Noteholder Plan, in each case relating to any fact or circumstance existing  
 13 prior to or as of the Effective Date, except for gross negligence and willful misconduct or the  
 14 obligations of any Person or Entity with respect to their obligations pursuant to the Noteholder Plan.  
 15 Any of the foregoing parties in all respects shall be entitled to rely upon the advice of counsel with  
 16 respect to their duties and responsibilities under the Noteholder Plan.

#### 14 **G. Supplemental Injunction**

15 In order to preserve and promote the settlements contemplated by and provided for in the  
 16 Noteholder Plan and as described in Article IX of the Noteholder Plan, except as otherwise expressly  
 17 provided in the Noteholder Plan or the Confirmation Order, all Persons and any Person claiming by  
 18 or through them, which have held or asserted, which currently hold or assert, or which may hold or  
 19 assert any Claims or any other Causes of Action, obligations, suits, judgments, damages, debts,  
 20 rights, remedies, or liabilities of any nature whatsoever, and all Equity Interests, or other rights of a  
 21 Holder of an equity security or other ownership interest, against any of the Released Parties based  
 22 upon, attributable to, arising out of or relating to any Claim against or Equity Interest in the Debtor,  
 23 whenever and wherever arising or asserted, whether sounding in tort, contract, warranty or any other  
 24 theory of law, equity or admiralty, shall be, and shall be deemed to be, permanently stayed,  
 25 restrained and enjoined from taking any action against any of the Released Parties for the purpose of  
 26 directly or indirectly collecting, recovering or receiving any payment or recovery with respect to any  
 27 such Claims or other Causes of Action, obligations, suits, judgments, damages, debts, rights  
 28 remedies or liability, and all Equity Interests or other rights of a Holder of an equity security or other  
 ownership interest, arising prior to the Effective Date, including, but not limited to (i) commencing  
 or continuing in any manner any action or other proceeding, (ii) enforcing, attaching, collecting or  
 recovering in any manner any judgment, award, decree or order, (iii) creating, perfecting or  
 enforcing any Lien or encumbrance, (iv) asserting a setoff, right of subrogation or recoupment of  
 any kind against any debt, liability or obligation due to any Released Party, and (v) commencing or  
 continuing any action, in any manner, in any place that does not comply with or is inconsistent with  
 the terms of the Noteholder Plan.

**ARTICLE X.  
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain such exclusive jurisdiction over the Chapter 11 Case after the Effective Date as is legally permissible, including jurisdiction to:

- i. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance, priority or classification of Claims or Equity Interests;
- ii. Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Noteholder Plan for periods ending on or before the Effective Date;
- iii. Resolve any matters related to the assumption of any executory contract and unexpired lease to which the Debtor is a party or with respect to which the Debtor or Reorganized Ahern may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom, including any disputed cure amount;
- iv. Ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Noteholder Plan;
- v. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor or Reorganized Ahern that may be pending on the Effective Date or brought thereafter prior to the closing of the Chapter 11 Case;
- vi. Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Noteholder Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Noteholder Plan, the Noteholder Disclosure Statement or the Confirmation Order;
- vii. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of any order, the Noteholder Plan, the Confirmation Order, or obligations of any Persons incurred in connection with such order, the Noteholder Plan, or the Confirmation Order;

- 1           viii.    Modify the Noteholder Plan before or after the Effective Date pursuant to section  
2                   1127 of the Bankruptcy Code; modify the Noteholder Disclosure Statement, the  
3                   Confirmation Order or any contract, instrument, release or other agreement or  
4                   document entered into or delivered in connection with the Noteholder Plan, the  
5                   Disclosure Statement, the Noteholder Plan Supplement, or the Confirmation Order; or  
6                   remedy any defect or omission or reconcile any inconsistency in any Bankruptcy  
7                   Court order, the Noteholder Plan, the Noteholder Disclosure Statement, the  
8                   Confirmation Order or any contract, instrument, release or other agreement or  
9                   document entered into, delivered or created in connection with the Noteholder Plan,  
10                  the Noteholder Disclosure Statement, the Noteholder Plan Supplement, or the  
11                  Confirmation Order, in such manner as may be necessary or appropriate to  
                consummate the Noteholder Plan;
- ix.     Issue injunctions, enforce the injunctions contained in the Noteholder Plan and the  
                Confirmation Order, enter and implement other orders or take such other actions as  
                may be necessary or appropriate to restrain interference by any entity with  
                consummation, implementation or enforcement of the Noteholder Plan or the  
                Confirmation Order;
- x.     Enter and implement such orders as are necessary or appropriate if the Confirmation  
                Order is for any reason or in any respect modified, stayed, reversed, revoked or  
                vacated or Distributions pursuant to the Noteholder Plan are enjoined or stayed;
- xi.     Determine any other matters that may arise in connection with or relate to the  
                Noteholder Plan, the Noteholder Disclosure Statement, the Confirmation Order or any  
                contract, instrument, release or other agreement or document entered into or delivered  
                in connection with the Noteholder Plan, the Noteholder Disclosure Statement or the  
                Confirmation Order;
- xii.    Enter an order closing the Chapter 11 Case;
- xiii.   Hear and decide any Claim or Cause of Action of the Debtor or Reorganized Ahern  
                pending on the Effective Date;
- xiv.    Decide or resolve any matter over which the Bankruptcy Court has jurisdiction  
                pursuant to section 505 of the Bankruptcy Code;
- xv.     Resolve any Disputed Claims;
- xvi.    Recover all assets of the Debtor and property of the Debtor's Estate, wherever  
                located, including resolving any Avoidance Actions;
- xvii.   Determine the scope of any discharge of the Debtor under the Noteholder Plan or the  
                Bankruptcy Code; and
- xviii.  Resolve any disputes regarding whether a Cause of Action constitutes a Retained  
                Cause of Action.

provided, however, that the foregoing is not intended to (1) expand the Bankruptcy Court's jurisdiction beyond that allowed by applicable law, (2) impair the rights of an Entity to (i) invoke the jurisdiction of a court, commission, or tribunal, including, without limitation, with respect to matters relating to a governmental unit's police and regulatory powers, and (ii) contest the invocation of any such jurisdiction; provided, further, that the invocation of such jurisdiction, if granted, shall not extend to the allowance or priority of Claims or the enforcement of any money judgment against the Debtor or Reorganized Ahern, as the case may be, entered by such court, commission, or tribunal, and (3) impair the rights of an Entity to (i) seek the withdrawal of the reference in accordance with 28 U.S.C. § 157(d) and (ii) contest any request for the withdrawal of reference in accordance with 28 U.S.C. § 157(d).

## ARTICLE XI. MISCELLANEOUS PROVISIONS

### A. Effectuating Documents; Further Transactions; And Timing

Each of the officers of the Debtor and Reorganized Ahern are authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Noteholder Plan and any obligations issued transferred, or cancelled pursuant to the Noteholder Plan and transactions contemplated by the Noteholder Plan. All transactions that are required to occur on the Effective Date under the terms of the Noteholder Plan shall be deemed to have occurred simultaneously. The Debtor and Reorganized Ahern are authorized and directed to do such acts and execute such documents as are necessary to implement the Noteholder Plan.

### B. Cancellation Of Existing Agreements

On the latest to occur of (i) the Effective Date; (ii) the entry of an order resolving all Claims in the Chapter 11 Case; and (iii) the final Distribution made to Holders of Allowed Claims in accordance with the terms of the Noteholder Plan, unless otherwise provided in the Noteholder Plan, any document, agreement, or instrument evidencing any Disputed Claim that is disallowed shall be deemed automatically cancelled and terminated without further act or action under any applicable agreement, law, regulation, order, or rule and the obligations of the Debtor under such documents, agreements, or instruments evidencing such Claims shall be discharged.

### C. Exemption From Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, (i) the issuance, Distribution, transfer, or exchange of Estate property; (ii) the creation, modification, consolidation, or recording of any deed of trust or other interest, or the securing of additional indebtedness by such means or by other means in furtherance of, or in connection with the Noteholder Plan or the Confirmation Order; (iii) the making, assignment, modification, or recording of any lease or sublease; or (iv) the making, delivery, or recording of a deed or other instrument of transfer under, in furtherance of, or in connection with, the Noteholder Plan, Confirmation Order, or any transaction contemplated above, or any transactions arising out of, contemplated by, or in any way related to the foregoing shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act or real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment and the appropriate state or local government officials or agents shall be,

1 and hereby are, directed to forego the collection of any such tax or assessment and to accept for  
 2 filing or recordation any of the foregoing instruments or other documents without the payment of  
 any such tax or assessment.

### 3 **D. Modification Of The Noteholder Plan**

4 Prior to Confirmation, the Proponents may alter, amend, or modify the Noteholder Plan  
 5 under section 1127(a) of the Bankruptcy Code at any time. After the Confirmation Date and prior to  
 the Effective Date, the Proponents may, under sections 1127(b), (c), and (d) of the Bankruptcy Code,  
 6 alter, amend, or modify the Noteholder Plan or institute proceedings in the Bankruptcy Court to  
 7 remedy any defect or omission or reconcile any inconsistencies in the Noteholder Plan or the  
 Confirmation Order, and to make appropriate adjustments and modifications to the Noteholder Plan  
 8 or the Confirmation Order as may be necessary to carry out the purposes and effects of the  
 Noteholder Plan, so long as such proceedings do not materially adversely affect the treatment of  
 9 Holders of Claims under the Noteholder Plan.

### 10 **E. Revocation Of The Noteholder Plan**

11 The Proponents reserve the right to revoke or withdraw the Noteholder Plan at any time prior  
 12 to the Confirmation Date. If the Noteholder Plan is withdrawn or revoked or if the Bankruptcy  
 Court denies confirmation of the Noteholder Plan, then the Noteholder Plan shall be deemed null and  
 13 void and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by  
 or against the Debtor or any other Person, nor shall the withdrawal or revocation of the Noteholder  
 14 Plan prejudice in any manner the rights of the Debtor or any Person in any further proceedings  
 involving the Debtor. In the event the Noteholder Plan is withdrawn or revoked, nothing set forth  
 15 herein shall be deemed an admission of any sort and the Noteholder Plan and any transaction  
 contemplated thereby shall be inadmissible into evidence in any proceeding.  
 16

### 17 **F. Term Of Bankruptcy Injunction Or Stays**

18 All injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the  
 Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force  
 19 and effect until the Effective Date. Upon the Effective Date, the injunction provided in Article IX  
 hereof shall apply.  
 20

### 21 **G. Dissolution Of Committee**

22 On the Effective Date, the Committee shall cease to exist, except with respect to any  
 application for compensation or reimbursement of costs and expenses in connection with services  
 23 rendered prior to the Effective Date, any objection to any Professional Fee Claim, or any appeals of  
 the Confirmation Order. Following the Effective Date, none of the Committee's professionals shall  
 24 be precluded from representing any Entity created by the Noteholder Plan.

### 25 **H. Governing Law**

26 Except to the extent that the Bankruptcy Code or other federal law is applicable or as  
 provided in any contract, instrument, release, or other agreement entered into in connection with the  
 27 Noteholder Plan or in any document which remains unaltered by the Noteholder Plan, the rights,  
 duties, and obligations of the Debtor and any other Person arising under the Noteholder Plan shall be  
 28

governed by, and construed and enforced in accordance with, the internal laws of the State of Nevada without giving effect to Nevada choice of law provisions.

### **I. Plan Supplement**

The Noteholder Plan Supplement shall be filed with the Clerk of the Bankruptcy Court at least seven (7) days prior to the Voting Deadline; provided, however, that the Proponents may amend the documents contained in the Noteholder Plan Supplement, subject to Article XI(D) hereof, through and including the Effective Date in a manner consistent with the Noteholder Plan and the Noteholder Disclosure Statement. Each of the documents contained in the Noteholder Plan Supplement as to form and substance shall be subject to the consent of the Noteholders, which consent shall not be unreasonably withheld. Upon its filing with the Bankruptcy Court, the Noteholder Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours.

### **J. Expedited Tax Determination**

Reorganized Ahern may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, Reorganized Ahern for all taxable periods through the Effective Date.

### **K. Post-Confirmation Date Fees And Expenses**

From and after the Confirmation Date, Reorganized Ahern shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, (i) retain professionals and (ii) pay the reasonable fees and expenses (including reasonable professional fees and expenses) incurred by the Debtor or Reorganized Ahern, as the case may be, related to implementation and consummation of or consistent with the provisions of the Noteholder Plan.

### **L. Substantial Consummation**

On the Effective Date, the Noteholder Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

### **M. Exhibits/Schedules**

All exhibits and schedules to the Noteholder Plan, including the Noteholder Plan Supplement, are incorporated into and are a part of the Noteholder Plan as if set forth in full herein.

### **N. Closing Of The Chapter 11 Case**

Reorganized Ahern shall, promptly upon the full administration of the Chapter 11 Case, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court.

### **O. Severability Of Noteholder Plan Provisions**

If, prior to Confirmation, any term or provision of the Noteholder Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will have the power to

alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision then will be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Noteholder Plan to the extent that the general intent of the Noteholder Plan can be effectuated will remain in full force and effect and will in no way be affected, Impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Noteholder Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

#### **P. Withholding And Reporting Requirements**

In connection with the Noteholder Plan and all instruments issued in connection therewith and Distributions thereon, Reorganized Ahern shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority and all Distributions hereunder shall be subject to any such withholding and reporting requirements. Reorganized Ahern shall be authorized to take any and all action that may be necessary to comply with such withholding and recording requirements. Notwithstanding any other provision of the Noteholder Plan, each Holder of an Allowed Claim that has received a Distribution pursuant to the Noteholder Plan shall have sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding, and other tax obligation on account of such Distribution.

#### **Q. Fees And Reporting To The U.S. Trustee**

Prior to the Effective Date, the Debtor, and after the Effective Date, the Reorganized Ahern, is obligated to pay the U.S. Trustee quarterly fees based upon all disbursements in accordance with the sliding scale set forth in 28 U.S.C. § 1930(a)(6). These fees accrue throughout the pendency of the Chapter 11 Case and until entry of a final decree. U.S. Trustee fees paid prior to confirmation of the Noteholder Plan will be reported in operating reports required by sections 704(8), 1106(a)(1), 1107(a) of the Bankruptcy Code and the United States Trustee Guidelines. All U.S. Trustee quarterly fees accrued prior to confirmation of the Noteholder Plan will be paid on or before the Effective Date pursuant to section 1129(a)(12) of the Bankruptcy Code. All U.S. Trustee fees accruing post-confirmation are due on a calendar quarter basis and reported both on post-confirmation operating reports and in post-confirmation operating reports required by the United States Trustee Guidelines.

#### **R. Binding Effect**

The Noteholder Plan shall be binding upon and inure to the benefit of the Debtor and the Estate, Reorganized Ahern and all present and former Holders of Claims against and Equity Interests in the Debtor, whether or not such Holders will receive or retain any property or interest in property under the Noteholder Plan, their respective successors and assigns, including, without limitation, all other parties in interest in the Chapter 11 Case.

**ARTICLE XII.**  
**CONFIRMATION AND CONSUMMATION PROCEDURE**

**A. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after appropriate notice, to hold a hearing on confirmation of a plan. As of the date of the filing of the Noteholder Plan and Noteholder Disclosure Statement, the Proponents have requested, pursuant to the requirements of the Bankruptcy Code and the Bankruptcy Rules, that the Bankruptcy Court schedule the Confirmation Hearing. Notice of the Confirmation Hearing will be provided to all known creditors, equity holders or their representatives. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

Pursuant to section 1128(b) of the Bankruptcy Code, any party in interest may object to confirmation of a plan of reorganization. Any objection to Confirmation of the Noteholder Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the objector, the nature and amount of Claims or Equity Interests held or asserted by the objector against the Debtor, the basis for the objection and the specific grounds of the objection, and must be filed with the Bankruptcy Court, with a copy to chambers, together with proof of service thereof, and served upon the Debtor, the U.S. Trustee, all creditors and indenture trustees in accordance with Bankruptcy Rule 2002(b).

**B. Plan Confirmation Requirements Under The Bankruptcy Code**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Noteholder Plan satisfies the requirements of chapter 11 of the Bankruptcy Code that must be satisfied in order for a plan to be confirmed. Specifically, in addition to other applicable requirements, the Proponents believe that the Noteholder Plan satisfies or will satisfy the following requirements of section 1129 of the Bankruptcy Code:

(a) The Proponents, as the proponents of the Noteholder Plan, have complied with the applicable provisions of the Bankruptcy Code.

(b) The Noteholder Plan has been proposed in good faith and not by any means forbidden by law.

(c) Any payment made or promised by the Debtor or by a person acquiring property under the Noteholder Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Noteholder Plan and incident to the Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment: (i) made before the confirmation of the Noteholder Plan is reasonable; or (ii) is subject to the approval of the Bankruptcy Court as reasonable, if such payment is to be fixed after confirmation of the Noteholder Plan.

(d) The Proponents, as proponents of the Noteholder Plan, will disclose the identity and affiliations of any individual proposed to serve, after confirmation of the Noteholder Plan, as the plan administrator, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and with public policy.

1 (e) The Proponents will disclose the identity of any Insider that will be employed  
2 or retained as or by the plan administrator and the nature of any compensation for such Insider.

3 (f) Each Holder of an Impaired Claim or Equity Interest either has accepted the  
4 Noteholder Plan or will receive or retain under the Noteholder Plan, on account of such Holder's  
5 Claim or Equity Interest, property of a value as of the Effective Date that is not less than the amount  
6 such Holder would receive or retain if the Debtor was liquidated on the Effective Date under chapter  
7 7 of the Bankruptcy Code (the "best interests" test).

- 8 • The starting point in determining whether the Noteholder Plan meets the "best  
9 interests" test is a determination of the amount of proceeds that would be  
10 generated from the hypothetical liquidation of the Debtor's assets in the context of  
11 a chapter 7 liquidation (such amount, the "Liquidation Proceeds"). The  
12 Liquidation Proceeds must then be reduced by the costs of such liquidation,  
13 including costs incurred during the Chapter 11 Case and allowed under chapter 7  
14 of the Bankruptcy Code (such as professionals' fees and expenses, a chapter 7  
15 trustee's fees and the fees and expenses of professionals retained by the chapter 7  
16 trustee). The potential chapter 7 liquidation distribution in respect of each Class  
17 must be reduced further by costs imposed by the delay caused by conversion to  
18 chapter 7. In addition, inefficiencies in the claims resolution process in a chapter  
19 7 would negatively impact the recoveries of creditors. The net present value of a  
20 hypothetical chapter 7 liquidation distribution in respect of an Impaired Claim is  
21 then compared to the recovery provided by the Noteholder Plan for such Impaired  
22 Claim.
- 23 • To support its opinion that the Noteholder Plan meets the best interest test, the  
24 Proponents have reviewed the Debtor's Liquidation Analysis attached as Exhibit  
25 B hereto (the "Debtor's Liquidation Analysis"). The Proponents have not had  
26 sufficient access to the Debtor's books and records and management to  
27 independently verify the Liquidation Analysis and its underlying assumptions.  
28 The Proponents' reference to the Debtor's Liquidation Analysis is for purposes of  
this Disclosure Statement only, and is not and should not be construed as an  
endorsement thereof or any waiver of any right to challenge the Debtor's  
Liquidation Analysis or as an acknowledgement or admission as to the accuracy  
thereof. Notwithstanding the foregoing, based on the Debtor's liquidation  
analysis the Proponents are of the opinion that the Noteholder Plan meets the best  
interests test.

23 (g) Except to the extent the Noteholder Plan meets the requirements of section  
24 1129(b) of the Bankruptcy Code, each Class of Claims or Equity Interests either has accepted the  
25 Noteholder Plan or is not an Impaired Class under the Noteholder Plan.

26 (h) Except to the extent that the Holder of a particular Claim has agreed to a  
27 different treatment of such Claim, the Noteholder Plan provides that Administrative Claims, Priority  
28 Tax Claims and Other Priority Claims will be paid in full or otherwise treated in accordance with  
section 1129(a)(9) of the Bankruptcy Code as required by the Bankruptcy Code.

1 (i) At least one Impaired Class has accepted the Noteholder Plan, determined  
2 without including any acceptance of the Noteholder Plan by any Insider holding a Claim in such  
3 Impaired Class.

4 (j) Confirmation of the Noteholder Plan is not likely to be followed by the  
5 liquidation or the need for further financial reorganization of any successor to the Debtor under the  
6 Noteholder Plan, unless such liquidation or reorganization is proposed in the Noteholder Plan. In  
7 order to determine whether the Noteholder Plan satisfies the feasibility requirements of section  
8 1129(a)(11) of the Bankruptcy Code, the Proponents have analyzed the Debtor's ability to meet its  
9 obligations under the Noteholder Plan. As part of this analysis, the Proponents have reviewed the  
10 projections set forth in the Debtor's Disclosure Statement (the "Debtor Projections") filed with the  
11 Bankruptcy Court on November 30, 2012. The Proponents have not had sufficient access to the  
12 Debtor's books and records and management to independently verify the accuracy of the Debtor  
13 Projections. The Proponents have sought and continue to seek further information from the Debtor  
14 to understand, analyze and verify the Debtor Projections and their underlying assumptions. The  
15 Proponents' reference to the Debtor Projections for purposes of this Disclosure Statement is not and  
16 should not be construed as an endorsement thereof or any waiver of any right to challenge the  
17 Debtor Projections or as any acknowledgement or admission as to the accuracy thereof.

18 (k) All fees of the type described in 28 U.S.C. § 1930, including the fees of the  
19 U.S. Trustee will be paid as of the Effective Date.

### 20 C. "Cramdown" Under Section 1129(B) Of The Bankruptcy Code

21 Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a chapter 11  
22 plan of reorganization even if not all impaired classes have accepted the plan, provided that such  
23 plan has been accepted by at least one impaired class. The Proponents will seek to confirm the  
24 Noteholder Plan notwithstanding its rejection by any of the Impaired Classes.

25 In order to obtain such nonconsensual confirmation (or "cramdown") of the Noteholder Plan,  
26 the Proponents must demonstrate to the Bankruptcy Court that the Noteholder Plan "does not  
27 discriminate unfairly" and is "fair and equitable" with respect to each Impaired Class that voted to  
28 reject the Noteholder Plan (each such Impaired Class, a "Non-Accepting Class").

#### 29 1. Fair And Equitable Test

30 The Bankruptcy Code provides a non-exclusive definition of the phrase "fair and equitable"  
31 and sets different standards for secured creditors, unsecured creditors, and equity holders, as follows:

##### 32 a. Secured Creditors

33 With respect to Non-Accepting Classes of Secured Claims, the "fair and equitable" test  
34 requires that either: (A) each impaired secured creditor retains the liens securing its allowed secured  
35 claim and receives on account of that claim deferred cash payments having a present value equal to  
36 the amount of its allowed secured claim; (B) the property securing the claim is sold free and clear of  
37 liens, with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds  
38 to be as provided in clause (A) or (B) of this paragraph; or (C) each impaired secured creditor  
39 realizes the "indubitable equivalent" of its allowed secured claim.

b. Unsecured Creditors

With respect to Non-Accepting Classes of Unsecured Claims, the “fair and equitable” test requires that (i) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim; or (ii) the holders of any claims (or equity interests) that are junior to the Non-Accepting Class will not receive any property under the Noteholder Plan. (This provision is often referred to as the “absolute priority” rule.)

c. Equity Interests

With respect to the Equity Interests Class, the “fair and equitable” test requires that (i) the Noteholder provides that each Holder of an Allowed Equity Interest receives or retains on account of such Allowed Equity Interest property of a value, as of the Effective Date of the Noteholder Plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such Holder is entitled, any fixed redemption price to which such Holder is entitled, or the value of such Allowed Equity Interest; or (ii) the Holder of any Allowed Equity Interest that is junior to the Allowed Equity Interest of such class will not receive or retain any property under the Noteholder Plan on account of such junior interest.

**2. No Unfair Discrimination**

A plan does not “discriminate unfairly” with respect to a Non-Accepting Class if the value of the cash and/or securities to be distributed to the class is equal to, or otherwise fair when compared to, the value of the distributions to other classes whose legal rights are the same as those of the Non-Accepting Class. Exact parity is not required. The Proponents believe that any discrepancy in treatment or potential Distributions to otherwise Unsecured Creditors is objectively small and justified based on certain inherent differences in the nature of their Claims, the time that will be required to liquidate their Claims, and the relative levels of risk that are being taken by different creditors simply based upon the time it will take to liquidate their Claims.

To the extent necessary, the Proponents will establish at the Confirmation Hearing that each of these requirements has been satisfied under the Noteholder Plan.

**D. Notice To Holders Of Claims And Equity Interests**

Approval by the Bankruptcy Court of the Noteholder Disclosure Statement means that the Bankruptcy Court has found that the Noteholder Disclosure Statement contains information of a kind and in sufficient and adequate detail to enable Holders of Claims and Equity Interests entitled to vote on the Noteholder Plan to make an informed judgment about whether to accept or reject the Noteholder Plan. THE BANKRUPTCY COURT’S APPROVAL OF THE NOTEHOLDER DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR THEREIN OR AN ENDORSEMENT OF THE NOTEHOLDER PLAN BY THE BANKRUPTCY COURT.

IF THE NOTEHOLDER PLAN IS APPROVED BY THE REQUISITE VOTE OF HOLDERS OF CLAIMS OR EQUITY INTERESTS ENTITLED TO VOTE AND IS SUBSEQUENTLY CONFIRMED BY THE BANKRUPTCY COURT, THE NOTEHOLDER PLAN WILL BIND ALL HOLDERS OF CLAIMS AGAINST, AND EQUITY INTERESTS IN,

1 THE DEBTOR, WHETHER OR NOT THEY WERE ENTITLED TO VOTE OR DID VOTE ON  
 2 THE NOTEHOLDER PLAN AND WHETHER OR NOT THEY RECEIVE OR RETAIN ANY  
 3 DISTRIBUTIONS OR PROPERTY UNDER THE NOTEHOLDER PLAN. THUS ALL  
 4 HOLDERS OF CLAIMS OR INTERESTS AGAINST THE DEBTOR ENTITLED TO VOTE ARE  
 5 ENCOURAGED TO READ THE NOTEHOLDER DISCLOSURE STATEMENT AND ITS  
 APPENDICES, SUPPLEMENTS AND/OR EXHIBITS CAREFULLY AND IN THEIR  
 ENTIRETY BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR REJECT THE  
 NOTEHOLDER PLAN.

6 THE NOTEHOLDER DISCLOSURE STATEMENT AND THE NOTEHOLDER PLAN  
 7 ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE  
 8 USED IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT OR REJECT  
 9 THE NOTEHOLDER PLAN. No solicitation of votes may be made except after distribution of the  
 10 Noteholder Disclosure Statement, and no person has been authorized to distribute any information  
 concerning the Debtor other than the information contained herein or therein. No such information  
 should be relied upon in making a determination to vote to accept or reject the Noteholder Plan.

#### 11 **E. Voting On The Noteholder Plan**

12 The Noteholder Disclosure Statement Order approved certain procedures governing the  
 13 solicitation of votes on the Noteholder Plan from Holders of Claims against and Equity Interests in  
 the Debtor, which procedures are described below.

##### 14 **1. Classes Entitled To Vote**

15 Pursuant to the provisions of the Bankruptcy Code, only holders of claims or interests that  
 16 are members of a class that (a) is "impaired" within the meaning of section 1124 of the Bankruptcy  
 17 Code (each, an "Impaired Class") and (b) is not deemed to have rejected the plan under section  
 1126(g) of the Bankruptcy Code are entitled to vote to accept or reject a plan of reorganization  
 (each, a "Voting Class").

18 Under the Noteholder Plan, the Voting Classes are Classes 4, 5, and 8. Holders of record of  
 19 Claims or Equity Interests as of [\_\_\_\_], 2013 that are classified in Voting Classes have been  
 20 sent a copy of this the Noteholder Plan and this Noteholder Disclosure Statement (the "Noteholder  
 21 Solicitation Package") and an appropriately customized ballot to vote on the Noteholder Plan (a  
 "Ballot").

22 Classes of claims or interests that are not impaired (the "Non-Voting Classes") under section  
 23 1124 of the Bankruptcy Code are conclusively presumed to have accepted the plan and are not  
 24 entitled to vote to accept or reject the plan. Holders of record of Claims or Equity Interests will  
 receive a copy of the Noteholder Solicitation Package and a notice of non-voting status.

##### 25 **2. Votes Required For Acceptance Of The Noteholder Plan By A Class**

26 Pursuant to the Bankruptcy Code, (i) a class of claims is considered to have accepted a  
 27 proposed plan of reorganization if the plan is accepted by more than one-half (1/2) in number of the  
 28 class members that actually voted on the plan, holding at least two-thirds (2/3) in dollar amount of  
 the claims in that class for which a valid Ballot was submitted; and (ii) a class of interests has  
 accepted a plan if such plan has been accepted by holders of such interests (other than any entity

whose vote has been designated by the Bankruptcy Court) that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests. Thus, for each of Classes 4 and 5 under the Noteholder Plan, the Class will have accepted the Noteholder Plan if, of the total number of Class members that vote, more than one-half (1/2) vote to accept the Noteholder Plan, and such majority of voters holds at least two-thirds (2/3) of the total dollar amount of the Claims in that Class for which a Ballot was properly submitted. For Class 8 under the Noteholder Plan, the Class will have accepted the Noteholder Plan if, of the total number of Class members that vote, more than two-thirds in amount of the Allowed Equity Interests in that Class vote to accept the Noteholder Plan.

### 3. Tabulation Of Votes

A vote to accept or reject the Noteholder Plan may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such vote was not cast in good faith or was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. A Ballot that does not indicate the acceptance or rejection of the Noteholder Plan or that indicates both acceptance and rejection of the Noteholder Plan will be disregarded. If the Holder of a Claim or Equity Interest does not properly submit its Ballot, or that Holder's vote is disregarded, that Holder and that Holder's Claim or Equity Interest will not be included in deciding whether the requisite number of Class members and amount of Claims or Equity Interests voted to accept or reject the Noteholder Plan.

Section 1129(b) of the Bankruptcy Code permits the confirmation of a plan of reorganization notwithstanding the non-acceptance of the Noteholder Plan by one or more impaired classes of claims or interests. Under that section, a plan may be confirmed if it does not "discriminate unfairly" and is "fair and equitable" with respect to each non-accepting class. Holders of Claims and Equity Interests should assume that, if one or more of the Classes of Claims or Equity Interests entitled to vote on the Noteholder Plan reject the Noteholder Plan, the Proponents will request confirmation of the Noteholder Plan pursuant to section 1129(b) of the Bankruptcy Code at the currently scheduled Confirmation Hearing. *For a more detailed description of the requirements for confirmation of a plan that has been rejected by one or more classes, please see Article XII hereof.*

### 4. Voting Instructions

If you are entitled to vote on the Noteholder Plan, a Ballot is enclosed with this Noteholder Disclosure Statement. If you are entitled to vote in more than one Class, you will receive separate Ballots for each Claim or Equity Interest, which must be used for each separate Class when voting on the Noteholder Plan. Please refer to your Ballot and the Noteholder Disclosure Statement Order for more specific instructions on voting on the Noteholder Plan.

#### **If you are a Holder of record of a Claim:**

Please vote and return your Ballot(s) in accordance with the instructions set forth herein and in the instructions accompanying your Ballot(s), to:

Ahern Equipment Rentals Claims Processing  
c/o Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, CA 90245

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**TO BE COUNTED, YOUR EXECUTED BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE NOTEHOLDER PLAN MUST BE RECEIVED AT THE ADDRESS ABOVE NO LATER THAN 4:00 P.M. (PREVAILING PACIFIC TIME) ON [\_\_\_\_], 2013 (THE “VOTING DEADLINE”). ANY BALLOT RECEIVED THAT IS NOT EXECUTED, DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE NOTEHOLDER PLAN, OR INDICATES BOTH ACCEPTANCE AND REJECTION OF THE NOTEHOLDER PLAN WILL BE DISREGARDED. DO NOT RETURN ANY OTHER DOCUMENTS WITH YOUR BALLOT. FACSIMILE BALLOTS WILL NOT BE ACCEPTED.**

## **5. Inquiries**

If you are a Holder of a Claim or Equity Interest entitled to vote on the Noteholder Plan and either did not receive a Ballot, received a damaged Ballot, or lost your Ballot, or if you have questions about the procedures for voting your Claim or Equity Interest, or about the packet of materials that you received, please contact Kurtzman Carson Consultants LLC (the “Voting Agent”), at 2335 Alaska Avenue, El Segundo, CA 90245, Attention: Ahern Equipment Rentals Claims Processing, or by telephone at (877) 606-7652.

If you wish to obtain additional copies of the Noteholder Plan, this Noteholder Disclosure Statement, the Noteholder Plan Supplement or the exhibits to those documents, at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d), please contact Fennemore Craig Jones Vargas, 300 South Fourth Street, Suite 1400, Las Vegas, Nevada 89101, Attention: Laurel E. Davis, Esq. by telephone at (702) 692-8000 or by electronic mail at [ldavis@fclaw.com](mailto:ldavis@fclaw.com), or by downloading such documents (excluding the Ballots) from the Debtor’s restructuring website at <http://www.kccllc.net/Ahern>.

## **ARTICLE XIII. ISSUANCE AND DISTRIBUTION OF NEW SECURITIES AND RELATED MATTERS**

### **A. Issuance Of New Equity Interests In Reorganized Ahern**

Reorganized Ahern shall be organized as a Delaware limited liability company. The New Equity Interests will be comprised of the membership interests in Reorganized Ahern issued to satisfy the Second Lien Claims, the participants in the Backstopped Rights Offering and the exercise of any New Warrants.

### **B. Issuance Of Rights Offering Equity Interests**

As presently contemplated, pursuant to the Backstopped Rights Offering, eligible Holders of Second Lien Notes will receive a non-transferable right (a “Subscription Right”) entitling such Holder to purchase its pro-rata share of up to \$15 million of New Equity Interests, based on the ultimate enterprise value of Reorganized Ahern as determined by the Bankruptcy Court. Additional terms of the Rights Offering will be set forth in a term sheet annexed to the Backstopped Rights Offering Agreement, and shall include any requirements that must be satisfied for the Backstopped Rights Offering to be exempt from the Securities Act pursuant to Section 1145 of the Bankruptcy Code. The Backstopped Rights Offering Agreement will be filed with the Noteholder Plan Supplement.

**C. Issuance Of New Warrants**

In the event that the Holders of Allowed Equity Interests in Class 8 vote to accept the Plan, Reorganized Ahern shall issue New Warrants, which shall entitle the Holders to acquire up to 3% of the New Equity of Reorganized Ahern, pursuant to the terms of the New Warrant Agreement, which shall be filed with the Noteholder Plan Supplement.

**D. Management Equity Incentive Program**

At the discretion of the New Board of Directors of Reorganized Ahern, after the Effective Date Reorganized Ahern may adopt a Management Equity Incentive Plan for the purpose of granting awards over time to directors, officers and employees of Reorganized Ahern. Any awards granted pursuant to the Management Equity Incentive Program shall be subject to a vesting schedule and other customary conditions. Awards granted pursuant to the Management Equity Incentive Program shall not exceed 10% of the New Equity Interests in Reorganized Ahern on a fully diluted basis.

**ARTICLE XIV.  
U.S. SECURITIES LAW MATTERS**

Except as set forth below, any and all debt instruments and equity securities to be issued in conjunction with the Noteholder Plan will be issued without registration under the Securities Act or any similar federal, state, or local law in reliance upon the exemptions set forth in section 1145 of the Bankruptcy Code or, if applicable, in reliance on the exemption set forth in section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder.

Section 1145(c) of the Bankruptcy Code provides that securities issued pursuant to a registration exemption under section 1145(a)(1) of the Bankruptcy Code are deemed to have been issued pursuant to a public offering. Therefore, the securities issued pursuant to a section 1145 exemption may generally be resold by any holder thereof without registration under the Securities Act pursuant to the exemption provided by section 4(1) thereof unless the holder is an “underwriter” with respect to such securities, as such term is defined in section 1145(b)(1) of the Bankruptcy Code. In addition, such securities generally may be resold by the recipients thereof without registration under state securities or “blue sky” laws pursuant to various exemptions provided by the respective laws of the individual states. However, recipients of securities issued under the Noteholder Plan are advised to consult with their own counsel as to the availability of any such exemption from registration under federal securities laws and any relevant state securities laws in any given instance and as to any applicable requirements or conditions to the availability thereof.

Section 1145(b)(1) of the Bankruptcy Code defines an “underwriter” for purposes of the Securities Act as one who, subject to certain exceptions, (a) purchases a claim with a view to distribution of any security to be received in exchange for such claim, or (b) offers to sell securities offered or sold under the Noteholder Plan for the holders of such securities, or (c) offers to buy securities issued under the Noteholder Plan from the holders of such securities, if the offer to buy is made with a view to distribution of such securities, and if such offer is under an agreement made in connection with the Noteholder Plan, with the consummation of the Noteholder Plan or with the offer or sale of securities under the Noteholder Plan, or (d) is an issuer, as used in section 2(11) of the Securities Act, with respect to such securities.

1 The term “issuer,” as used in section 2(11) of the Securities Act, includes any person directly  
 2 or indirectly controlling or controlled by, an issuer of securities, or any person under direct or  
 3 indirect common control with such issuer.” Control” (as defined in Rule 405 under the Securities  
 4 Act) means the possession, direct or indirect, of the power to direct or cause the direction of the  
 5 policies of a person, whether through the ownership of voting securities, by contract, or otherwise.  
 6 Accordingly, an officer or director of a reorganized debtor or its successor under a plan of  
 7 reorganization may be deemed to be “in control” of such debtor or successor, particularly if the  
 8 management position or directorship is coupled with ownership of a significant percentage of the  
 9 reorganized debtor’s or its successor’s voting securities. Moreover, the legislative history of section  
 10 1145 of the Bankruptcy Code suggests that a creditor who owns at least ten percent (10%) of the  
 11 voting securities of a reorganized debtor may be presumed to be a “control person.”

8 To the extent that persons deemed “underwriters” receive securities under the Noteholder  
 9 Plan, resales of such securities would not be exempted by the operation of section 1145 of the  
 10 Bankruptcy Code from registration under the Securities Act or other applicable law, Holders of such  
 11 restricted securities may, however, be able, at a future time and under certain conditions, to sell  
 12 securities without registration pursuant to the resale provisions of Rule 144 and Rule 144A under the  
 13 Securities Act.

12 IN VIEW OF THE COMPLEX, SUBJECTIVE NATURE OF THE QUESTION OF  
 13 WHETHER A RECIPIENT OF SECURITIES MAY BE AN UNDERWRITER OR AN  
 14 AFFILIATE OF THE ISSUER, THE PROPONENTS MAKE NO REPRESENTATIONS  
 15 CONCERNING THE RIGHT OF ANY PERSON TO TRADE ANY SECURITIES TO BE  
 16 DISTRIBUTED PURSUANT TO THE NOTEHOLDER PLAN. ACCORDINGLY, THE  
 17 PROPONENTS RECOMMEND THAT POTENTIAL RECIPIENTS OF SECURITIES UNDER  
 18 THE NOTEHOLDER PLAN CONSULT THEIR OWN COUNSEL CONCERNING WHETHER  
 19 THEY MAY FREELY TRADE SUCH SECURITIES.

## 17 **ARTICLE XV.** 18 **FINANCIAL INFORMATION AND PROJECTIONS**

### 19 **A. Financial Projections**

20 In connection with confirmation of the Plan, the Bankruptcy Court will be required to  
 21 determine that the Noteholder Plan is feasible pursuant to Section 1129(a)(11) of the Bankruptcy  
 22 Code, which means that the confirmation of the Noteholder Plan is not likely to be followed by the  
 23 liquidation or the need for further financial reorganization of the Debtor. To support its opinion that  
 24 the Noteholder Plan is feasible, the Proponents have reviewed the Debtor Projections. The  
 25 Proponents have not had sufficient access to the Debtor’s books and records and management to  
 26 independently verify the accuracy of the Debtor Projections. The Proponents have sought and  
 27 continue to seek further information from the Debtor to understand and analyze the Debtor  
 28 Projections and their underlying assumptions. The Proponents’ reference to the Debtor Projections  
 for purposes of this Disclosure Statement is not and should not be construed as an endorsement  
 thereof or any waiver of any right to challenge the Debtor Projections or as any acknowledgement to  
 the accuracy thereof. Without limiting the foregoing, the Debtor Projections indicate that  
 Reorganized Ahern should have sufficient cash flow to pay and service its debt obligations under the  
 Noteholder Plan and to fund its operations, particularly in light of the substantial debt reduction

proposed by the Noteholder Plan. Accordingly, the Proponents believe that the Noteholder Plan complies with the financial feasibility standard of Section 1129(a)(11) of the Bankruptcy Code.

## **B. Reorganization Value**

Based upon the information in the Debtor's Disclosure Statement and other information provided by the Debtor or available through public resources, the Proponents, with the assistance of their financial advisor, Houlihan Lokey, believe that the Debtor's enterprise value does not exceed the amount of its existing liabilities to secured and unsecured creditors. More specifically, the Proponents intend to prove at the Confirmation Hearing regarding the Noteholder Plan that the Debtor's enterprise value is less than the aggregate amount of the amounts that it owes with respect to the DIP Loan Agreement, the First Lien Term Loan Claims and the Second Lien Note Claims.

## **ARTICLE XVI. RISK FACTORS**

THE IMPLEMENTATION OF THE NOTEHOLDER PLAN IS SUBJECT TO A NUMBER OF MATERIAL RISKS, INCLUDING THOSE ENUMERATED IN THE RISK FACTORS SET FORTH BELOW.

PRIOR TO VOTING TO ACCEPT OR REJECT THE NOTEHOLDER PLAN, HOLDERS OF CLAIMS AGAINST OR EQUITY INTERESTS IN THE DEBTOR SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS NOTEHOLDER DISCLOSURE STATEMENT, THE DOCUMENTS DELIVERED TOGETHER WITH THIS NOTEHOLDER DISCLOSURE STATEMENT AND THE NOTEHOLDER PLAN SUPPLEMENT. THE RISK FACTORS SET FORTH BELOW SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE NOTEHOLDER PLAN AND ITS IMPLEMENTATION.

The Noteholder Plan sets forth the means for satisfying the Claims against the Debtor. The reorganization of the Debtor's business and operations under the proposed Noteholder Plan avoids the potentially adverse impact of a sale or liquidation on the Debtor's customers, suppliers, employees, communities, and the recoveries that Creditor and Equity Interests are projected to receive under the Noteholder Plan.

## **A. Certain Bankruptcy Considerations**

### **1. Risk Of Non-Confirmation Of The Noteholder Plan**

The Noteholder Plan provides for certain conditions that must be satisfied (or waived) prior to the Confirmation Date. In order for the Proponents to implement the Noteholder Plan, the Proponents must obtain approval of the Noteholder Plan from the Debtor's creditors and confirmation of the Noteholder Plan through the Bankruptcy Court, and then successfully implement the Noteholder Plan. The foregoing process requires the Proponents to: (a) meet certain statutory requirements with respect to the adequacy of this Noteholder Disclosure Statement; (b) solicit and obtain creditor acceptances of the Noteholder Plan; and (c) fulfill other statutory conditions with respect to the confirmation of the Noteholder Plan.

1 The Proponents may or may not receive the requisite acceptances to confirm the Noteholder  
 2 Plan. If the requisite acceptances of the Noteholder Plan are received, the Proponents will seek  
 3 confirmation of the Noteholder Plan by the Bankruptcy Court. If the requisite acceptances are not  
 4 received, the Proponents will nevertheless seek confirmation of the Noteholder Plan pursuant to the  
 5 “cramdown” provisions of the Bankruptcy Code as long as at least one Impaired Class has accepted  
 6 the Noteholder Plan (determined without including the acceptance of any “insider” in such Impaired  
 7 Class).

8 Even if the requisite acceptances of the Noteholder Plan are received, or the Proponents are  
 9 able to seek a “cramdown” confirmation, the Bankruptcy Court may not confirm the Noteholder  
 10 Plan as proposed. A Holder of a Claim in a Non-Accepting Class could challenge the balloting  
 11 procedures and results as not being in compliance with the Bankruptcy Code. Even if the  
 12 Bankruptcy Court determined that the balloting procedures and results were appropriate, the  
 13 Bankruptcy Court could decline to confirm the Noteholder Plan if it found that any of the statutory  
 14 requirements for confirmation had not been met. See Article XII hereof for a discussion of these  
 15 requirements.

16 The Bankruptcy Court may determine that the Noteholder Plan does not satisfy one or more  
 17 of these applicable requirements, in which case the Noteholder Plan could not be confirmed by the  
 18 Bankruptcy Court. If the Noteholder Plan is not confirmed by the Bankruptcy Court, it is unclear  
 19 whether the Debtor would be able to reorganize its businesses and what, if any, Distributions  
 20 Holders of Claims and Equity Interests ultimately would receive with respect to their Claims or  
 21 Equity Interests. In addition, there can be no assurance that the Proponents will be able to  
 22 successfully develop, prosecute, confirm, and consummate an alternative plan of reorganization with  
 23 respect to the Chapter 11 Case that is acceptable to the Bankruptcy Court and the Holders of Claims  
 24 and Equity Interests.

## 2. Risk Of Non-Occurrence Or Delayed Occurrence Of Effective Date

25 The Noteholder Plan provides for certain conditions that must be satisfied (or waived) prior  
 26 to the Effective Date. As of the date of the Noteholder Disclosure Statement, there can be no  
 27 assurance that any or all of the conditions in the Noteholder Plan will be satisfied (or waived) at all,  
 28 or within anticipated timeframes. Although the Proponents anticipate that the Effective Date will  
 occur soon after the Confirmation Date, if any, there can be no assurance as to such timing. If each  
 of the conditions precedent is not satisfied or duly waived, the Confirmation Order will be vacated  
 without further order of the Bankruptcy Court, in which event the Noteholder Plan would be deemed  
 null and void. If the Effective Date is unduly delayed, the Debtor’s relationships with its customers,  
 vendors, employees, and partners could be adversely affected, and the cost of the Debtor’s Chapter  
 11 Case could also materially increase.

## 3. Risk That Claims Will Be Higher Than Estimated

29 There can be no assurance that any estimated Claim amounts set forth in the Noteholder  
 30 Disclosure Statement are correct. The actual allowed amount of Claims might differ materially in  
 31 some respects from the estimates as the estimated amounts are subject to certain risks, uncertainties,  
 32 and assumptions. Should one or more of these risks or uncertainties materialize, or should the  
 33 underlying assumptions prove incorrect, the actual allowed amount of Claims may vary materially  
 34 from those estimated herein.

**B. Business Risks****1. The Debtor's Actual Financial Results May Vary Significantly From The Projections**

The Projections were prepared by the Debtor's management in consultation with its professional advisors. The Projections have not been examined or compiled by independent accountants. While the Debtor has presented the Projections with numerical specificity, they have stated that they have necessarily based the Projections on a variety of estimates and assumptions that may not be realized and are inherently subject to significant business, economic, competitive, industry, regulatory, market and financial uncertainties and contingencies, many of which will be beyond the Debtor's and the Reorganized Debtor's control. The Proponents do not and cannot make any representations as to the accuracy of the Projections or to the Debtor's or the Reorganized Debtor's ability to achieve the projected results. Some assumptions inevitably will not materialize. Furthermore, events and circumstances occurring subsequent to the date on which the Projections were prepared may differ from any assumed facts and circumstances. Alternatively, any events and circumstances that come to pass may well have been unanticipated, and thus may affect financial results in a materially adverse or materially beneficial manner. The Projections, therefore, may not be relied upon as a guaranty or other assurance of the actual results that will occur. In addition, the value of the New Equity Interests may be adversely affected by the Debtor's failure to achieve operating results that meet or exceed the Projections.

**2. Failure To Attract And Maintain Employees May Adversely Affect The Debtor's Financial Results**

The Debtor's experienced and skilled employees have the ability to leave the Debtor and deprive the Debtor of valuable skills and knowledge that contribute substantially to its business operations. In the event that the Debtor's employees cease employment with Reorganized Ahern, it is not clear that Reorganized Ahern will be able to replace such personnel with comparable personnel. Because the Debtor's success depends to a significant degree upon the continued contributions of its employees, employee attrition may hinder the Debtor's ability to operate efficiently, which could have a material adverse effect on their results of operations and financial condition. In addition, upon emergence from the Chapter 11 Cases, the Debtor may need to attract and retain new personnel, including key management, sales, marketing, and other personnel. Accomplishing this may be difficult due to many factors, including uncertainty created by the Debtor's Chapter 11 Case. The failure to continue to attract and retain such individuals could materially adversely affect Reorganized Ahern's ability to compete.

**3. Change Of Control**

Don F. Ahern, the Debtor's president has publicly indicated that if a competing plan is confirmed that does not leave him in control of Reorganized Ahern he will terminate his association with Reorganized Ahern and form a competing equipment rental business.

**4. Risk Associated With Potential Loss Of Affiliated Leases**

The Debtor leases numerous properties for its operation from entities controlled by and/or affiliated with Don F. Ahern and his family members. According to the Debtor, these leased locations are important to the Debtor's business and operations. According to the Debtor, these

1 Affiliated Leases expire in October 2014 and they have not yet been assumed by the Debtor in the  
 2 Chapter 11 Case. If the affiliated lessors terminated the Affiliated Leases or the Affiliated Leases  
 3 were unable to be assumed or renewed, the loss of these locations could adversely effect the business  
 4 operations and prospects of the Debtor and Reorganized Ahern. There can be no assurance that Mr.  
 Ahern or his affiliated entities will permit the Debtor or Reorganized Ahern to continue their use of  
 the properties subject to the Affiliated Leases.

## 5 **5. Risk Of Competition**

6 As did the Debtor, Reorganized Ahern will face intense competition which could adversely  
 7 affect its operations and harm financial condition. For example, Reorganized Ahern cannot ensure  
 8 that a new equipment rental or sales company will not commence operations in the same markets in  
 9 which the Debtor currently operates or that an existing competitor will not increase capacity or lower  
 prices in such markets.

## 10 **6. Environmental Risks**

11 The Proponents are not aware of any environmental condition at any of the Debtor's  
 12 properties that the Proponents consider material. However, it is possible that future environmental  
 13 laws and regulations, or new interpretations of existing environmental laws, will impose material  
 14 environmental liabilities on the Debtor, or that current environmental conditions of properties that  
 15 the Debtor owns or operates will be adversely affected by hazardous substances associated with  
 other nearby properties or the actions of unrelated third parties. The cost to defend any future  
 environmental claims, perform any future environmental remediation, satisfy any environmental  
 liabilities, or respond to changed environmental conditions could have a material adverse effect on  
 the Debtor's financial condition and operating results.

## 16 **7. Leverage Risk**

17 The Noteholder Plan Proponents believe that the Debtor will emerge from Chapter 11 with a  
 18 reasonable level of debt that can be effectively serviced in accordance with the Noteholder Plan  
 19 Proponents' business plan, especially with the equitization of the Second Lien Notes Claims and the  
 20 resulting substantial deleveraging. Circumstances, however, may arise which might cause the  
 Noteholder Plan Proponents to conclude that the Debtor is overleveraged, which could have  
 significant negative consequences, including:

21 i. It may become more difficult for Reorganized Ahern to satisfy its obligations with  
 22 respect to all of its obligations;

23 ii. Reorganized Ahern may be vulnerable to a downturn in the markets in which it  
 24 operates or a downturn in the economy in general;

25 iii. Reorganized Ahern may be required to dedicate a substantial portion of its cash flow  
 26 from operations to fund working capital, capital expenditures, and other general corporate  
 requirements;

27 iv. Reorganized Ahern may be limited in its flexibility to plan for, or react to, changes in  
 28 its business and the industry in which it operates or entry of new competitors into its markets;

v. Reorganized Ahern may be placed at a competitive disadvantage compared to its competitors that have less debt, including with respect to implementing effective pricing and promotional programs; and

vi. Reorganized Ahern may be limited in borrowing additional funds.

Additionally, there may be factors beyond the control of Reorganized Ahern that could impact its ability to meet debt service requirements. The ability of Reorganized Ahern to meet debt service requirements will depend on its future performance, which, in turn, will depend on Reorganized Ahern's ability to sustain sales or rental conditions in the markets in which Reorganized Ahern operates, the economy generally, and other factors that are beyond its control. The Proponents can provide no assurance that the business of Reorganized Ahern will generate sufficient cash flow from operations or that future borrowings will be available in amounts sufficient to enable Reorganized Ahern to pay its indebtedness or to fund its other liquidity needs. Moreover, Reorganized Ahern may need to refinance all or a portion of its indebtedness on or before maturity. The Proponents cannot make assurances that Reorganized Ahern will be able to refinance any of its indebtedness on commercially reasonable terms or at all. If Reorganized Ahern is unable to make scheduled debt payments or comply with the other provisions of its debt instruments, its various lenders will be permitted under certain circumstances to accelerate the maturity of the indebtedness owing to them and exercise other remedies provided for in those instruments and under applicable law.

## **8. Litigation Risks**

Reorganized Ahern will be subject to various claims and legal actions arising in the ordinary course of its business. The Proponents are not able to predict the nature and extent of any such claims and actions and cannot guarantee that the ultimate resolution of such claims and actions will not have a material adverse effect on Reorganized Ahern.

## **9. Adverse Publicity**

Adverse publicity or news coverage relating to Reorganized Ahern, including but not limited to publicity or news coverage in connection with the Chapter 11 Case, may negatively impact Reorganized Ahern's efforts to establish and promote name recognition and a positive image after the Effective Date.

## **C. Risks To Creditors Who Will Receive New Equity Interests**

The ultimate recoveries under the Plan to Holders of Claims that receive New Equity Interests pursuant to the Plan will depend on the realizable value of the New Equity Interests. The New Equity Interests will be subject to a number of material risks, including, but not limited to, those specified below. Prior to voting on the Plan, each Holder of Claims that are to be satisfied in whole or part through a distribution of New Equity Interests should carefully consider the risk factors specified or referred to below, as well as all of the information contained in the Plan.

**1. The Lack Of An Established Market For The New Equity Interests May Adversely Affect Liquidity**

No established market exists for the New Equity Interests and there can be no assurance that an active market for the New Equity Interests will develop, nor can any assurance be given as to the prices at which such securities might be traded. If a trading market for the New Equity Interests does not develop or is not maintained, holders of New Equity Interests may experience difficulty in reselling such securities or may be unable to sell them at all. Even if such market were to exist, such securities could trade at prices higher or lower than the value attributed to such securities in connection with their distribution under the Plan, depending upon many factors, including, without limitation, markets for similar securities, industry conditions, Reorganized Ahern's performance and investor expectations thereof. In addition, some persons who receive New Equity Interests may prefer to liquidate their investment in the near term rather than hold such securities on a long-term basis. Accordingly, any market for such securities may be volatile, at least for an initial period following the Effective Date, and may be depressed until the market has had time to absorb any such sales and to observe Reorganized Ahern's performance.

**2. Lack Of Dividends May Adversely Affect Liquidity Of The New Equity Interests**

The Projections do not anticipate that cash dividends or other distributions will be made with respect to the New Equity Interests in the foreseeable future. In addition, covenants in certain debt instruments to which Reorganized Ahern will be a party may restrict their ability to pay dividends and make certain other payments. Further, such restrictions on dividends may have an adverse impact on the market demand for the New Equity Interests as certain institutional investors may invest only in dividend-paying equity securities or may operate under other restrictions that may prohibit or limit their ability to invest in the securities issued pursuant to the Plan.

**3. Future Sales Or Issuances Of Equity May Depress The Price Of The New Equity Interests**

If holders of New Equity Interests sell substantial amounts of New Equity Interests or Reorganized Ahern issues substantial additional amounts of its equity securities, or there is a belief that such sales or issuances could occur, the market price of the New Equity Interests could decline significantly. If Holders who receive New Warrants in connection with the implementation of the Plan exercise such warrants and purchase a significant number of shares of New Equity Interests, the market price of the New Equity Interests may be adversely affected. In addition, any new issuances of equity securities by Reorganized Ahern including as a result of warrant exercises, may be dilutive to existing stockholders of Reorganized Ahern.

**4. Certain Provisions Of The Reorganized Ahern Organizational Documents, Including Provisions That Restrict Holders' Ability To Transfer Their New Equity Interests Could Impact The Attractiveness Of The New Equity Interests To Investors And, As A Result, Their Market Value**

The Reorganized Ahern Organizational Documents, including the limited liability operating agreement, will contain restrictions on unitholders' ability to transfer New Equity Interests and certificates representing membership interests in Reorganized Ahern may bear a legend restricting

the sale, transfer, assignment, conversion or other disposal of such securities. Such transfer restrictions, together with drag along and tag along and related provisions and certain Holders' ability to nominate their representatives to the Board of Managers of Reorganized Ahern may limit Holders' ability to sell or transfer their New Equity Interests, and will likely prevent or limit the establishment of a liquid trading market for the New Equity Interests.

#### **D. Certain U.S. Federal Income Tax Considerations**

Some of the material consequences of the Noteholder Plan regarding U.S. federal income taxes are summarized in Article XIX. Some of these tax issues raise unsettled and complex legal issues, and also involve various factual determinations, that raise additional uncertainties. The Debtor cannot ensure that the Internal Revenue Service ("IRS") will not take a contrary view and no ruling from the IRS has been or will be sought regarding the tax consequences described in Article XIX. In addition, the Debtor cannot ensure that the IRS will not challenge the various positions the Debtor has taken, or intends to take, with respect to various U.S. federal income tax issues, or that a court would not sustain such a challenge.

**FOR A MORE DETAILED DISCUSSION OF THE CONSEQUENCES AND RISKS RELATING TO THE SPECIFIC POSITIONS THE DEBTOR INTENDS TO TAKE WITH RESPECT TO VARIOUS TAX ISSUES, PLEASE SEE ARTICLE XIX.**

### **ARTICLE XVII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE NOTEHOLDER PLAN**

If the Noteholder Plan is not confirmed and consummated, the alternatives include: (i) liquidation of the Debtor under chapter 7 or chapter 11 of the Bankruptcy Code; and (ii) the preparation and presentation of an alternative plans of reorganization.

#### **A. Liquidation Under Chapter 7 Or Chapter 11**

The Debtor believes that in liquidation under chapter 7, additional administrative expenses involved in the appointment of a trustee or trustees and attorneys, accountants, and other professionals to assist such trustees would cause a substantial diminution in the value of the Debtor's Estate. The assets available for distribution to creditors would be reduced by such additional expenses and by Claims, some of which would be entitled to priority, arising by reason of the liquidation and from the rejection of leases and other executory contracts in connection with the cessation of operations and the failure to realize the greater going concern value of the Debtor's assets. More importantly, conversion to chapter 7 liquidation would likely result in the immediate cessation of the Debtor's business, as most chapter 7 trustees are disinclined to continue operations.

The Debtor could also be liquidated pursuant to the provisions of a chapter 11 plan of liquidation. In a liquidation under chapter 11, the Debtor's assets theoretically could be sold in an orderly fashion over a more extended period of time than in a liquidation under chapter 7, thus resulting in a potentially greater recovery. Conversely, to the extent the Debtor's business incurs operating loss, the Debtor's effort to liquidate its assets over a longer period of time theoretically could result in a lower net distribution to creditors than they would receive through chapter 7 liquidation. Nevertheless, because there would be no need to appoint a chapter 7 trustee and to hire new professionals, chapter 11 liquidation might be less costly than chapter 7 liquidation and thus

1 provide larger net distributions to creditors than in chapter 7 liquidation. Any recovery in a chapter  
 2 11 liquidation, while potentially greater than in a chapter 7 liquidation, would also be highly  
 3 uncertain. Although preferable to a chapter 7 liquidation, the Proponents believe that any alternative  
 4 liquidation under chapter 11 is a much less attractive alternative to creditors than the Noteholder  
 5 Plan because of the greater return anticipated by the Noteholder Plan.

6 The Liquidation Analysis provided by the Debtor in the Debtor's Disclosure Statement filed  
 7 on November 30, 2012 is attached hereto as Exhibit B. The Proponents have not had sufficient  
 8 access to the Debtor's books and records and management to independently verify the accuracy of  
 9 the Liquidation Analysis and its underlying assumptions. The Proponents' reliance upon the  
 10 Debtor's Liquidation Analysis for purposes of this Disclosure Statement is not and should not be  
 11 construed as an endorsement thereof or any waiver of any right to challenge the Debtor's  
 12 Liquidation Analysis or as an acknowledgement or admission as to the accuracy thereof.

### 13 **B. Alternative Plans Of Reorganization**

14 If the Noteholder Plan is not confirmed, the Bankruptcy Court may confirm the Debtor's  
 15 Plan, or any other party in interest, may attempt to formulate an alternative chapter 11 plan. Any  
 16 attempt to formulate an alternative chapter 11 plan would necessarily delay creditors' receipt of  
 17 distributions and, due to the incurrence of additional administrative expenses during such period of  
 18 delay, may provide for smaller distributions to Holders of Allowed Claims than are currently  
 19 provided for under the Noteholder Plan. Accordingly, the Proponents believe that the Noteholder  
 20 Plan will enable all creditors to realize the greatest possible recovery on their respective Claims or  
 21 Equity Interests with the least delay.

## 22 **ARTICLE XVIII.**

### 23 **PREFERENCE AND OTHER AVOIDANCE ACTIONS**

24 A bankruptcy trustee (or a debtor as a debtor-in-possession) may avoid as a preference a  
 25 transfer of property made by a debtor to a creditor on account of an antecedent debt while a debtor  
 26 was insolvent, where that creditor receives more than it would have received in a liquidation of the  
 27 entity under chapter 7 had the payment not been made, if (i) the payment was made within ninety  
 28 (90) days before the date the bankruptcy case was commenced or (ii) the creditor is found to have  
 been an "insider," as defined in the Bankruptcy Code, within one year before the commencement of  
 the bankruptcy case. A debtor is presumed to have been insolvent during the ninety (90) days  
 preceding the commencement of the case.

A bankruptcy trustee (or a debtor as a debtor-in-possession) may avoid as a fraudulent  
 transfer a transfer of property made by a debtor within two years (and under applicable Nevada law,  
 four years) before the date the bankruptcy case was commenced if a debtor (i) received less than  
 reasonably equivalent value in exchange for such transfer and (ii) was insolvent on the date of such  
 transfer or became insolvent as a result of such transfer, such transfer left a debtor with an  
 unreasonably small capital, or a debtor intended to incur debts that would be beyond a debtor's  
 ability to pay as such debts matured.

Although the Proponents have not fully analyzed various potential preferences or other  
 Avoidance Actions, it is possible that some pre-petition transactions may be avoidable. The

Proponents thus hereby expressly reserve their rights to commence any appropriate actions pursuant to Chapter 5 of the Bankruptcy Code.

**ARTICLE XIX.**  
**CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE NOTEHOLDER PLAN**

The following discussion summarizes certain U.S. federal income tax consequences of the Noteholder Plan to certain holders of Claims or Equity Interests that are entitled to vote to accept or reject the Noteholder Plan. This summary is provided for information purposes only and is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”), Treasury Regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect as of the date hereof and all of which are subject to change, possibly with retroactive effect, that could adversely affect the U.S. federal income tax consequences described below.

This summary does not address all aspects of U.S. federal income taxation that may be relevant to a particular holder of a Claim in light of such holder’s particular facts and circumstances or to certain types of holders of Claims subject to special treatment under the Tax Code (for example, non-U.S. taxpayers, financial institutions, broker-dealers, life insurance companies, tax-exempt organizations, real estate investment trusts, regulated investment companies, grantor trusts, persons holding a Claim as part of a “hedging,” “integrated,” “constructive” sale or straddle transaction, traders in securities that elect to use the mark-to-market method of accounting for their securities holdings, persons holding claims through a partnership or other pass through entity, persons that have a “functional currency” other than the U.S. dollar, and persons who acquired or expect to acquire either an equity interest or other security in a Debtor or a Claim in connection with the performance of services). In addition, this summary does not discuss (i) alternative minimum tax consequences, (ii) any aspects of state, local, or non-U.S. taxation, (iii) U.S. federal taxes other than income taxes (such as federal estate and gift taxes or the 3.8% Medicare tax on certain investment income), and (iv) and does not address the U.S. federal income tax consequences to holders of Claims that are Unimpaired under the Noteholder Plan or holders of Claims that are not entitled to receive or retain any property under the Noteholder Plan.

A substantial amount of time may elapse between the date of the Noteholder Disclosure Statement and the receipt of a final Distribution under the Noteholder Plan. Events occurring after the date of the Noteholder Disclosure Statement, such as additional tax legislation, court decisions, or administrative changes, could affect the U.S. federal income tax consequences of the Noteholder Plan and the transactions contemplated thereunder. There can be no assurance that the IRS will not take a contrary view with respect to one or more of the issues discussed below. No ruling will be sought from the IRS with respect to any of the tax aspects of the Noteholder Plan, and no opinion of counsel has been or will be obtained by the Debtor with respect thereto.

**IRS CIRCULAR 230 NOTICE:** TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS NOTEHOLDER DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS AND EQUITY INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE TAX CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH

1 THE PROMOTION OR MARKETING BY THE PROPONENTS OF THE TRANSACTIONS OR  
 2 MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND EQUITY  
 3 INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES  
 FROM AN INDEPENDENT TAX ADVISOR.

4 As used herein, a "Holder" means a beneficial owner of Claims that is, for U.S. federal  
 income tax purposes:

- 5 • a citizen or individual resident of the United States;
- 6 • a corporation or other entity treated as a corporation created or organized in or under
- 7 the laws of the United States, any State thereof or the District of Columbia;
- 8 • an estate the income of which is subject to U.S. federal income taxation regardless of
- 9 its source; or
- 10 • a trust, if (1) a court within the United States is able to exercise primary supervision
- 11 over the trust's administration and one or more U.S. persons have the authority to
- 12 control all of its substantial decisions, or (2) a valid election to be treated as a U.S.
- person is in effect under the relevant Treasury Regulations with respect to such trust.

13 If a partnership is the holder of a Claim, the tax treatment of a partner in the partnership  
 14 generally will depend upon the status of the partner and the activities of the partnership. Partners of  
 15 partnerships holding a Claim should consult their tax advisors regarding the U.S. federal income tax  
 consequences of the transactions discussed below.

#### 16 **A. Certain U.S. Federal Income Tax Consequences to the Debtor Upon the Adoption of the Noteholder Plan**

17 The Debtor is classified as a corporation taxable under subchapter S of the Tax Code for U.S.  
 18 federal income tax purposes (an "S-corporation"). It is expected that, in connection with the  
 19 adoption of the Noteholder Plan, the Debtor will be converted into a limited liability company  
 20 taxable as a partnership for U.S. federal income tax purposes. For U.S. federal income tax purposes,  
 21 the conversion of an S-corporation into a partnership is treated as a deemed liquidating distribution  
 22 of all of the S-corporation's assets and liabilities to its shareholders in exchange for their equity in  
 the S-corporation followed by a deemed contribution by such shareholders of the assets and  
 23 liabilities to the newly formed partnership. Thus, upon the adoption of the Noteholder Plan, for U.S.  
 24 federal income tax purposes, the Debtor will be deemed to liquidate and recognize gain or loss on its  
 assets as if such assets were sold for their fair market values, then distributing such assets and  
 liabilities to the holders of the Equity Interests. The Debtor's gain, if any, attributable to the  
 exchange of assets for Equity Interests will be included in the taxable income of the holders of the  
 existing Equity Interests.

#### 25 **B. Certain U.S. Federal Income Tax Considerations With Respect of Reorganized 26 Ahern**

27 Under current Treasury Regulations, a domestic entity that has two or more members and  
 28 that is not organized as a corporation under U.S. federal or state law will generally be classified as a  
 partnership for U.S. federal income tax purposes, unless it elects to be treated as a corporation.

Thus, subject to the discussion of “publicly traded partnerships” below, Reorganized Ahern likely will be treated as a partnership for U.S. federal income tax purposes upon the effective date of the Noteholder Plan.

Under the “publicly traded partnership” provisions of the Tax Code, an entity that would otherwise be treated as a partnership whose interests are considered to be publicly traded and does not meet a qualifying income test will be taxable as a corporation. For example, if there are more than one-hundred (100) members of Reorganized Ahern at any time during a taxable year, as determined under applicable Treasury Regulations, Reorganized Ahern could be treated as a corporation for U.S. federal income tax purposes. Reorganized Ahern may take measures to prevent it from being treated as a corporation for U.S. federal income tax.

This discussion of the U.S. federal income tax consequences of the Noteholder Plan assumes that Reorganized Ahern will be treated as a partnership for U.S. federal income tax purposes.

### **C. U.S. Federal Income Tax Consequences to Holders of Second Lien Notes that Participate in the Noteholder Plan**

#### **1. Consequences Of The Contribution**

Holders of Second Lien Notes should be treated as contributing their Second Lien Notes to the capital of Reorganized Ahern in exchange for their New Equity Interests in a nontaxable transaction (the “Contribution”).<sup>1</sup>

As a result, the Contribution and the material U.S. federal income tax consequences of the Contribution to the Holders should be as follows:

- Except as discussed below with respect to claims for accrued but unpaid interest, a Holder of Second Lien Notes should not recognize gain or loss on the Contribution.
- The adjusted basis in the New Equity Interests generally should equal the Holder’s tax basis in the Second Lien Notes.
- The holding period of the New Equity Interests should include the holding period of the Second Lien Notes.
- If a Holder acquired Second Lien Notes with market discount, such holder should not be required to recognize any accrued but unrecognized market discount upon the Contribution (although such holder may be required to recognize accrued but unpaid market discount as ordinary income upon the subsequent taxable disposition of its New Equity Interests).

Pursuant to the Noteholder Plan, the Debtor will allocate, for U.S. federal income tax purposes, the value of the New Equity Interests issued in respect of any Second Lien Notes first to the principal amount of the Holder’s Second Lien Notes, and thereafter to accrued but unpaid interest. Certain legislative history indicates that an allocation of consideration between principal

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<sup>1</sup> Federal income tax treatment of the subscription rights to be determined.

and interest provided for in a bankruptcy plan of reorganization is binding for U.S. federal income tax purposes. However, no assurances can be provided that the IRS will not challenge such allocation. To the extent a Holder of Second Lien Notes receives New Equity Interests in satisfaction of interest accrued during the holding period of such Second Lien Notes, such amount will be taxable to the Holder as interest income (if not previously included in the Holder's gross income). Conversely, such a Holder generally recognizes a deductible loss to the extent that any accrued interest claimed or amortized original issue discount ("OID") was previously included in its gross income and is not paid in full in connection with the Contribution.

Each Holder of a Second Lien Note is urged to consult its/his/her own tax advisor regarding the allocation of consideration and the deductibility of previously included unpaid interest and OID for tax purposes

## **2. Consequences Of The Ownership And Disposition Of The New Equity Interests**

As a partnership, Reorganized Ahern itself will not be subject to U.S. federal income tax. Instead, Holders of New Equity Interests will receive an allocation of income, gain, loss, deduction, credit and items thereof and will be responsible for any tax liability associated with such allocation. Specifically, each Holder of New Equity Interests will be required to report on its U.S. federal income tax return, and will be subject to tax in respect of, its distributive share of each item of Reorganized Ahern's income, gain, loss, deduction and credit of Reorganized Ahern. Each item generally will have the same character as if the Holder had realized the item directly. Holders will be required to report these items regardless of the extent to which, or whether, they receive cash distributions from Reorganized Ahern for such taxable year, and thus may incur income tax liabilities in excess of any distributions from Reorganized Ahern. For purposes of calculating Reorganized Ahern's items of income, gain, loss and deduction, upon the implementation of the Noteholder Plan, Reorganized Ahern should receive a tax basis in the assets of the Debtor equal to their fair market values at the time of the adoption of the plan.

A Holder may deduct its allocable share of Reorganized Ahern losses' (if any) only to the extent of such holder's adjusted tax basis (discussed below) in its New Equity Interests at the end of the taxable year in which the losses occur. In addition, various other limitations in the Tax Code may significantly limit a Holder's ability to deduct its allocable share of deductions and losses of Reorganized Ahern against other income.

A Holder of New Equity Interests generally will not recognize gain or loss on the receipt of a distribution of cash or property from Reorganized Ahern. Such Holder, however, will recognize gain on the receipt of a distribution of money and, in some cases, marketable securities, from Reorganized Ahern to the extent such cash distribution or the fair market value of such marketable securities distributed exceeds such holder's adjusted tax basis in its New Equity Interests.

*Sale, Exchange, or Other Taxable Disposition of the New Equity Interests.* A Holder will recognize gain on the complete liquidation of its New Equity Interest only to the extent the amount of money received exceeds its adjusted tax basis in its interest. Any gain recognized by a Holder on the receipt of a distribution from Reorganized Ahern generally will be capital gain, but may be taxable as ordinary income, either in whole or in part, under certain circumstances. No loss can be

1 recognized on a distribution in liquidation of a New Equity Interest, unless the holder receives no  
2 property other than money and ordinary income items.

3 A Holder's adjusted tax basis in its New Equity Interests generally will be equal to such  
4 Holder's initial tax basis in its Second Lien Notes (see "U.S. Federal Income Tax Consequences to  
5 Holders of Second Lien Notes that Participate in the Noteholder Plan — Consequences of the  
6 Contribution" above), increased by the sum of (i) any additional capital contribution such Holder  
7 makes to Reorganized Ahern, (ii) the Holder's allocable share of the income of Reorganized Ahern,  
8 and (iii) increases in the Holder's allocable share of the indebtedness of Reorganized Ahern, and  
reduced, but not below zero, by the sum of (iv) the holder's allocable share of the losses of  
Reorganized Ahern, and (v) the amount of money or the adjusted tax basis of property distributed to  
such Holder, including constructive distributions of money resulting from reductions in such  
Holder's allocable share of indebtedness of Reorganized Ahern.

9 A sale of all or part of a Holder's New Equity Interests will result in the recognition of gain  
10 or loss in an amount equal to the difference between the amount of the sales proceeds or distribution  
11 (including any constructive distribution) and such holder's adjusted tax basis for the portion of the  
12 interest disposed of. Any gain or loss recognized with respect to such a sale generally will be treated  
13 as capital gain or loss, and will be long-term capital gain or loss if the New Equity Interest has been  
14 held for more than one year, except to the extent that the proceeds of the sale are attributable to a  
Holder's allocable share of certain ordinary income items of Reorganized Ahern and such proceeds  
exceed the holder's adjusted tax basis attributable to such ordinary income items. A Holder's ability  
to deduct any loss recognized on the sale of its New Equity Interests will depend on the holder's own  
circumstances and may be restricted under the Tax Code.

15 Each Holder of a Second Lien Note Claim is urged to consult its tax advisor regarding the tax  
16 consequences of directly or indirectly owning and disposing or causing to dispose of New Equity  
17 Interests.

18 **D. Certain U.S. Federal Income Tax Consequences of Holders of Equity Interests  
That Receive New Warrants Pursuant to the Noteholder Plan**

19 Holders of Equity Interests could be treated as exchanging their share of the Debtor's assets  
20 for New Warrants pursuant to a nontaxable contribution under section 721 of the Tax Code. If the  
21 exchange of Equity Interests for New Warrants were treated as such a contribution, a Holder of  
22 Equity Interests generally would not recognize gain or loss upon the exchange. Holders of Equity  
Interests are strongly urged to consult their tax advisors concerning the receipt, ownership and  
disposition of New Warrants.

23 **E. Information Reporting And Withholding**

24 All distributions to Holders of Claims under the Noteholder Plan are subject to any  
25 applicable tax withholding. Under U.S. federal income tax law, interest, dividends, and other  
26 reportable payments may, under certain circumstances, be subject to "backup withholding" at the  
27 then applicable withholding rate (currently 28%). Backup withholding generally applies if the  
28 Holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"),  
(b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain  
circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN

provided is its correct number and that it is a United States person that is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax and the appropriate information is supplied to the IRS. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

In addition, from an information reporting perspective, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Noteholder Plan would be subject to these regulations and require disclosure on the Holders' tax returns.

The U.S. federal income tax consequences to foreign taxpayers are not generally addressed in this summary, but such consequences are complex. Foreign holders of Second Lien Note Claims could be subject to certain unfavorable U.S. federal income tax consequences if they receive New Equity Interests pursuant to the Noteholder Plan. For example, such foreign holders would be required to file U.S. federal income tax returns annually and would be directly liable for U.S. federal income tax on their distributive share of Reorganized Ahern's income (whether distributed or not). Foreign holders of New Equity Interests will be generally subject to U.S. federal income tax upon the disposition of their interests. Foreign holders of Second Lien Note Claims are urged to consult their tax advisors concerning the receipt, ownership and disposition of New Equity Interests.

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE NOTEHOLDER PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ASSOCIATED WITH THE NOTEHOLDER PLAN ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS ABOUT THE U.S. FEDERAL, STATE, LOCAL AND NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE NOTEHOLDER PLAN.

## ARTICLE XX. CONCLUSION AND RECOMMENDATION

The Proponents believe that confirmation and implementation of the Noteholder Plan is preferable to any of the alternatives described above because it will provide the greatest recoveries to Holders of Claims and Equity Interests. Other alternatives would involve significant delay, uncertainty and substantial additional administrative costs. The Proponents urge Holders of Impaired Claims and Equity Interests entitled to vote on the Noteholder Plan to accept the Noteholder Plan and to evidence such acceptance by returning their Ballots so that they will be received no later than 4:00 p.m., prevailing Pacific time, on [\_\_\_\_\_] 2013.

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